

United States  
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN THREE VOLUMES.)

THE UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSO-  
CIATED OIL COMPANY, COLUMBUS  
MIDWAY OIL COMPANY, 32 OIL COM-  
PANY, L. B. McMURTRY, J. M. McLEOD,  
and STANDARD OIL COMPANY,

Appellees.

VOLUME II.

(Pages 385 to 704, Inclusive.)

Upon Appeal from the United States District Court  
for the Southern District of California,  
Northern Division.

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(Deposition of Samuel R. Banks.)

Q. At the time you signed Government's Exhibit No. 21, did you receive any money or thing of value?

A. I received a check for \$250, or in cash, I don't know which one it was—yes, it was a check, and I got the cash for it. Q. I now invite your attention to a check which is substantially as follows:

“No. 109. New York, September 23, 1910.

“SECOND NATIONAL BANK

of the City of New York,

“Pay to the order of Samuel R. Banks, Two hundred and fifty dollars.

\$250.

F. H. SEARLS.”

and on the reverse thereof is the following in type-writing:

“Received from L. B. McMurtry \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907.”

That is the end of the typewriting, and it is signed below, “Samuel R. Banks.” Is that your signature? A. That is my signature. Q. Is that the check to which you referred in your last answer? A. Yes, I believe it is. Q. Was the typewriting [343—237] I have referred to on the back at the time you signed it? A. I don't recollect, but I think it was. Q. Did you read that before you signed it? A. It if was there, I prob-

(Deposition of Samuel R. Banks.)

ably read it. Think McMurtry presented this check to me for my signature at one of the hotels, the Knickerbocker or the Waldorf. No one was present other than Thorn and McMurtry. Don't recall what was said.

Q. Why did you sign your name on the back of that check. A. I believed at that particular time that that \$250 was a payment from the moneys that they had received for oil that they had located on the property.

Received cash there in the room for the check that I signed. The next paper I recall signing was I think a certificate of stock, or something.

Q. I invite your attention now to the certificate No. 26, which is found in the original stock book of the Pacific Oil Lands Company, which recites on its face: This certifies that Samuel R. Banks is the owner of 1000 shares of the capital stock of the Pacific Oil Lands Company. Is that the certificate you have just referred to? A. Yes, I think it is.

Q. I invite your attention also to the receipt pasted on the stub of certificate No. 26, which is as follows:

“Received certificate No. 26 for 1000 shares of the Pacific Oil Lands Company,” date September 18, 1911, “Samuel R. Banks.”

Is that your signature? A. Yes. Q. Do you remember having signed that receipt? A. Yes, I signed it. Don't recall who delivered this certificate to me. Think I kept it until 1912. [344—238]

Q. I invite your attention now to a certificate on

(Deposition of Samuel R. Banks.)

the back of this stock, dated New York, November 21, 1911, the certificate being as follows: "For value received ——— hereby sells, assigns, and transfers unto ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— to transfer the said stock on the books of the within named corporation, with full power of substitution in the premises. Dated November 21, 1911, and signed "Samuel R. Banks," in the presence of T. J. Gil. Do you recognize that signature of Samuel R. Banks as yours? A. I do. In signing that I was transferring the stock over to someone else and delivered this certificate to Searls as an outright sale. To the best of my recollection, I received \$150 for it. Have no recollection of receiving any money from the Pacific Oil Lands Company since that, or hearing further from these oil land transactions outside of receiving a pamphlet or book, I think, relating to the oil lands in the particular locality there, or something like that—I don't know just what it was. That was some time after I signed the paper, according to my recollection.

Q. I invite your attention to three typewritten sheets, which are headed "Pacific Oil Lands Company. First Report to Stockholders." Did you receive a copy of that—is that what you refer to? A. I believe I have heard of this paper. Whether I read it,—I think I have a slight recollection of reading something like that. Q. (Question repeated.) A. I think I did. Q. Do you know when

(Deposition of Samuel R. Banks.)

you received that? A. No, I do not, I have no recollection of that. Q. Was it before or after you signed the certificate of November 21, 1911? A. I think it [345—239] was after.

Don't remember signing any papers in connection with the land matters after November 21, 1911, or receiving any money at the time I delivered this certificate No. 26 to Searls on November 21, 1911. I went to Mr. Searls' office when he was up with, I think, Baumgarten & Company, up here in Fifth Avenue somewhere, and I told him I had this Pacific Oil Lands stock, and that I knew he was somewhat interested in it, in the companies out there, and I asked him if I could sell it. I think I tried to find out at the time through a broker down town whether it was worth anything or not. I don't know whether any—I don't think I found out anything about it, that is, it was not listed, and I did not get the information, so then I went to him, and I asked him what it was worth, and I told him I needed some money right away, that I was pressed for cash, and I was broke at that time—not now—and he asked me what I would take for it, and I think I told him I wanted,—I think it was \$150, I don't know whether I said \$150 or \$200, but I needed it right away, and he said he would give it to me, and I said, "All right, take it." Don't recall any conversation with anyone at the time this stock was originally handed to me.

Q. At the time when you parted with the possession of certificate No. 26, to Mr. Searls, on Novem-

(Deposition of Samuel R. Banks.)

ber 21, 1911, did you know how many locations of oil land claims had been made by Mr. L. B. McMurtry, in the State of California, or elsewhere as your attorney in fact, under the power of attorney, dated December 21, 1907, upon which your name appeared as a locator? A. You mean the number of locators. Q. The number of locations that were made? A. Made under my particular name? [346—240] Q. Yes. I think there was something said about him locating under my name one location or tract, or something. Q. Who told you that? A. I think Mr. Thorn told me that. Q. Do you remember when it was he told it to you? A. No, I do not. He used to see me from time to time. Q. At the time you parted with the possession of certificate No. 26, did you know what area of the public domain had been located by Mr. McMurtry acting under this power of attorney upon which your name appeared, as one of the locators? A. I think there was something like twenty acres. Q. Who advised you of that fact? A. Mr. Thorn, I think. Q. Do you remember when it was he told you that? A. No, I do not recall. Q. At the time you parted with the possession of certificate No. 26, did you know the state of development of any oil lands that had been located by Mr. McMurtry, and upon which locations your name appeared as locator? A. If he had located any? Q. No, I mean what work, looking to the discovery of oils or other minerals, had been performed upon the land? A. I had been informed



(Deposition of Samuel R. Banks.)

that they had sunk a number of wells, and located oil. Q. And who was your informant? A. Mr.

Thorn. Q. At the time you parted with the possession of certificate No. 26, did you know what had been done by Mr. McMurtry, and by Mr. Herrin and his associates, pursuant to the contract of August 4, 1910, or his supplemental contract of August 6, 1910, or any other contracts between Mr. McMurtry and Mr. Herrin and his associates? A. Did

I know anything about the contracts, or what had been done on the lands? Q. Did you know anything about either? A. Well, I had been told from

time to time that they had located oil, and that there had been some kind of contracts made with some concerns regarding the disposal of their oil.

Q. Did you ever make any inquiry yourself in regard to the [347—241] *the* condition of affairs with respect to these oil lands? A. I think I did, asked Mr. Thorn how the things were coming on out there, and as to the prospects of its development, when I had seen him from time to time, and I think he informed me the prospects were good. That is my recollection. Q. Did you ever advance

any money for the purpose of developing oil on any of these lands? A. No. Q. Were you ever asked to advance any money for that purpose? A. I

don't believe so, no. Q. At the time you signed the first paper with respect to these oil land matters,

was there any advice given you as to what expenses you would be likely to incur on account of signing

(Deposition of Samuel R. Banks.)

the papers? A. I cannot recall any conversation of that kind.

Cross-examination.

No, in giving McMurtry power or attorney did limit him as to number of locations he was to make in my name. Yes, when I was referred to 20 acres of land I meant it was my understanding that an individual could locate only 20 acres in one location. No, never repudiated this power of attorney. No, nothing was said to me when I signed this power of attorney by anybody to the effect that they wanted to use my name, for they wanted to use my name for the benefit of McMurtry or anybody else, and I never signed any paper to that effect or to the effect that McMurtry or anybody else was the owner of the claims located in my name, or any part of the location made in my name. No, did not intend to defraud the Government or aid or assist to do so. Yes, I executed this power of attorney in good faith. I never rescinded it to my knowledge. Yes, at the time I signed the ratification this power of attorney was in full force.

Q. You then, if never before, received direct knowledge [348—242] that your power of attorney had been recorded in Kern County, Cal.? A. I believe I did, yes. No, at the time I signed that ratification no one offered me money to sign it, nor was I told that it was necessary to have that paper ratified because of demands made by the lawyers in California representing the other parties. To the best of my recollection, Thorn presented that

(Deposition of Samuel R. Banks.)

ratification for my signature. No, I am not sure that it was not McMurtry. Yes, I believe there was something said about a contract at that time, or a deal, or something of that kind. It was either McMurtry or Thorn who later gave me the check for \$250.

Q. See whether this refreshes your memory; that he had a bunch of ratifications from all or nearly all of the thirty-two locators of these lands, and that he thought these contracts would then come on with Mr. Herrin, or the Associated Oil Company, and that in order to properly swing this thing, he said himself, or if it was not him, Thorn said, that McMurtry was going to organize a corporation for and on behalf of the locators, and transfer the contracts to the corporation, and to that end he wanted you and every other locator to sign a transfer to him of your interest in the located lands, so that the corporation could be properly formed,—did you have any talk of that kind with him? A. Yes, I believe there was some talk of that kind, along those lines.”

My recollection is that I signed the ratification first and later received the check, and then the stock. Yes, the stock came nearly a year after I signed that transfer to McMurtry. Q. And the paper that you also say you saw or read shows these properties and these contracts were transferred to the company, the ownership of the various people whom he thought were interested by reason of the locations and services rendered. Now, does the fact



(Deposition of Samuel R. Banks.)

that I [349—243] have called to your attention, with these circumstances, and the times and other happenings, the date and the instruments, refresh your memory in any way so that you can state that you were told at the time you signed that transfer and received that check and that money, that you were still to receive a further interest because of your interest in those lands? A. I believe I was.

Don't at all recall what was said when I received the stock. Yes, I believe the stock was given me because I was supposed to be entitled to it as a matter of right because of my transfer of my interest in the land. Don't recall who gave me the stock or took the receipt from me, but think it was Thorn. It may have been mailed to me. Yes, I believe it had reference to the locations made by McMurtry in my name. When I use the expression "I believe," I am stating what is now my best recollection. When I went to see Searls about disposing of this stock he said he thought I would be foolish to part with it or, something of that kind, I don't recollect what it was, but there was no question about that, I told him I came up to see him and wanted to see if I could get some money for it. Yes, I believe this was about my only asset at that time. [350—244]

**Deposition of Frederick S. Thorn, for Plaintiff.**

FREDERICK S. THORN, called April 20, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at 315 Webster Avenue, Jersey City

(Deposition of Frederick S. Thorn.)

Heights. Am a straw-hatter, with Young Brothers on 23d Street. Am a brother of C. W. Thorn. In December, 1907, resided in West Hoboken, Jersey City Heights, just above Jersey City Heights, New Jersey, and was working at 691 Broadway, Charles Levy & Sons, in the same line of business,

I signed this power of attorney (Plaintiff's Exhibit 5), through my brother Charles, who acquainted me in regards to it, about a week before. He stated to me that Mr. McMurtry was a capable man in oil, prospecting, and if we would, or if I would rather, sign this paper, a power of attorney that he possibly could find oil lands out there that would in the future be worth something. There were present at the time Charles my nephew Harry B. Thorn, and several others whose names I don't remember; also the notary, McTigue. The next I heard of this ratification was in 1910, when they wanted us to sign a ratification.

(Plaintiff's Exhibit 22 with this deposition is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Frederick S. Thorn, August 15, 1910.)

Plaintiff's Exhibit 22 is a copy of the ratification referred to and bears a photographic copy of my signature. I saw a photographic copy of this ratification a week ago. Mr. Brann showed [351—245] it to me. I believe Mr. McTigue presented this original to me for signature. I understood that, to the best of my recollection, Mr. McMurtry was try-

(Deposition of Frederick S. Thorn.)

ing to dispose of some of the land, in some way to this party, Herrin, and they wished to know if we were *bona fide* locators, and sent on for our ratification. My brother told me that. No, had had no conversation with my brother between the time of signing the power of attorney and the time I had this conversation about this ratification. I had not seen him for nearly two years I think it was. I had no conversation with anyone concerning the oil lands transaction during that time, nor received any advices concerning it. No, at the time I executed this ratification I did not know how many claims had been located by McMurtry under the power of attorney or the area of lands embraced in any location or locations that my name appeared on as a locator. The only thing, as near as I can recall, was the statement that I received that quite a number of acres had been located, and my name had been used on several occasions. Received that information from my brother at the time of signing this ratification. Don't remember that at that time I learned anything about the contents or purposes of this contract of August 4, 1910, with Herrin and others, mentioned in the ratification. Understood the development was very poor at that time, had not been progressing very fast. My brother told me that. That is the only source of information I had. Yes, I knew McMurtry at that time. Had met him in his office, 299 Broadway. Had then known F. H. Searls about two years. After signing this ratification I next heard of these oil land matters in September, 1910, my brother C.

(Deposition of Frederick S. Thorn.)

W. Thorn mentioned it to me. I then received a check for \$250.

Q. I call your attention now to a check, which is substantially as follows: "No. 113, September 23, 1910, Second National [352—246] Bank of the City of New York, Pay to the order of Frederick S. Thorn, Two hundred and fifty dollars (\$250.00), F. H. Searls," and on the reverse side there is the following in typewriting: "Received from L. B. McMurtry, \$250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry in my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907." That ends the typewriting, and underneath is written the name, "Frederick S. Thorn." Is that your signature to that check? A. That is my signature. Yes, that is the check referred to. My brother, Charles W. Thorn, presented it to me. The typewriting was on the back when I signed it, and I read it. Returned the check to my brother and received \$250 in cash. He said they were trying to do the best they could in regard to the land, and that that was the first outcome on it, to come out of it. No, did not know how locations had been made. The next I heard was about a year after that I received shares in the Pacific Oil Lands Company through my brother. Stock Certificate No. 29, of the Pacific Oil Lands Company, shown me, is the certificate just referred to, and the receipt thereon: "Received Certificate No. 29, for 1000

(Deposition of Frederick S. Thorn.)

shares of Pacific Oil Lands Company," date September 11, 1911," bears my signature. I signed that receipt in September and returned it to my brother. When my brother delivered this certificate to me he said that possibly we would derive something out of the stocks of that company, in the future. Said we were entitled to it because of acting as locators. The next transaction was in signing a proxy in 1913. [353—247] Exhibit 23 bears my signature, and is the instrument above referred to. It was presented to me by my brother C. W. Thorn. Don't remember what he said at the time. All I can remember is he wanted me to sign that proxy, so that Mr. McMurtry could vote my interests, and so far as the oil lands are concerned, why, I don't remember just what it was he told me at that time. Q. Did you understand what interest it was that you were allowing Mr. McMurtry to vote? A. I might have at the time, but what it was has just escaped my memory at the present time. The next transaction was in January, 1914, I received a check for \$20. Yes, that is my signature on Plaintiff's Exhibit 24, and I remember having signed it but cannot say whether it was presented to me by some person or came through the mail.

(Plaintiff's Exhibit 23 with this deposition and Plaintiff's Exhibit 24 is a proxy and consent to dividend similar in form to Plaintiff's Exhibits 5 and 6 respectively, with the deposition of Frank B. Chapman.)

I read all these various papers before I signed



(Deposition of Frederick S. Thorn.)

them. Yes, I received the check for \$20, dated January 8, 1914, on the Bank of California payable to the order of Frederick S. Thorn, signed Pacific Oil Lands Company, F. E. Harrison, Secretary and Treasurer, L. B. McMurtry, Vice-President, which is shown me, and that is my signature on the back. Received that in January 1914. Think there was a letter or circular accompanying it. Being shown three sheets of typewritten matter entitled "Pacific Oil Lands Company, First Report to Stockholders," will say that that is what accompanied the check, and I read it at the time. The next transaction was in April, 1914, when I sold the shares of the Pacific Oil Lands Company to Mr. Searls and surrendered the certificate No. 29 to my brother, C. W. Thorn. That is the only certificate of stock I ever had in that company. [354—248]

That is my signature on the back of Certificate 29. I signed a check at that time and received \$250 cash from my brother. I believe the check was drawn by Searls. My brother then told me that that was practically the finish of getting anything more out of it, that possibly there might be something turn up. Have not received anything since. The only information I had as to the resources and assets of this company at that time was through the statement I had received beforehand. I do not remember of knowing how many locations, my name was used on. I know several, that is as near as I can get to it. The only disposition of the lands that my name appeared upon as a locator that I know of was this

(Deposition of Frederick S. Thorn.)

Herrin contract. The only thing I knew as to what sum or sums of money, if any, McMurtry, Hoeppner, Searls or the Pacific Oil Lands Company had received out of these contracts with Herrin and others as near as I can remember, was a contract stated in a report. I think it was \$1,375,000, \$75,000 to be paid down and \$20 monthly. I last read that three days ago. I was then up with my brother and met Mr. Brann and we went over it together. He presented it to me and I read it. Yes, we discussed it.

Q. Have you now any idea of suing Mr. McMurtry on any of these transactions. A. No, sir, I have no idea of suing Mr. McMurtry, because I have had full confidence in his transactions. I know that he would execute as near as possible to my advantage.

Cross-examination.

Have not consulted with any attorney as to suing McMurtry. Yes, have discussed it with my brother. No, had no understanding direct or indirect with McMurtry, my brother, Searls, or anybody else at the time I signed the power of attorney that if the lands were located in my name anybody else was to have any interest in [355—249] the locations. Nobody asked me for such an agreement. No, had no intention that any of the lands located in my name would belong to McMurtry or anybody else. Yes, I believe my brother at the time he brought me that \$250 check stated something to the effect that it was the result of the ratification and was a dividend among the 32 locators of the moneys received by McMurtry in connection with that contract. Yes, my brother stated

(Deposition of Frederick S. Thorn.)

that the \$250 check represented my interest as a locator in the lands located by me. No, had no reason to think that my brother or McMurtry, or anybody was depriving me of my rightful interest in the locations, or the avails of the locations. No, I received nothing from anybody for my services in acting as a locator. Q. And now, I want again to draw your attention to this check, which contains this assignment on the back of it, or all your right, title and interest, that check is dated September 23, 1910,—is it not true that your brother told you at the time of making this check, and at the time of the ratification, that that was,—that there was some question raised by the Government of the United States by reason of the withdrawal, and that if the Associated Oil Company stopped on this contract, there would not be any money coming out of it, because it was all to come out of the oil, and that the payment so made did come out of the oil that they got out of these lands,—do you remember any conversation to that effect, by your brother, in substance and effect? A. I remember something of that kind being stated, yes. Q. You can't tell exactly what? A. No, sir, I cannot tell exactly the words. Q. Isn't this true, that your brother said to you when he gave you the check for \$250, that Mr. McMurtry wanted this transfer to him of the lands located in your behalf, for the purpose of properly handling the affair in California, and so as to protect your interests and was taking the same thing from [356—250] the other locators to protect their interests in these



(Deposition of Frederick S. Thorn.)

lands? A. Yes. Q. Isn't it a fact that your brother told you substantially what I have related to you, or suggested it to you as a reason for taking these transfers from you on the back of that check? A. Yes.

Q. Is it not equally true that you understood, when you got this certificate, that Mr. McMurtry had caused this organization to be organized, and had transferred these contracts that you ratified to this corporation, and that this certificate of stock represented your interest as a locator in all of those lands?

A. Yes. Q. Did you ever understand that any other locator received any more of that stock than you did?

A. No, sir. Q. Did anybody ever tell you prior to your receiving that stock, or prior to your sale of the stock, that Mr. McMurtry had appropriated or taken any of the stock to himself, or given any to Mr. Hoeppner, or Mr. Harrison, or Mr. Kay, or to anybody else than the locators? A. No, sir.

Q. At the time you sold your stock, did your brother, or Mr. Searls, when asking you whether you wanted to sell the stock for the \$250, say anything to you about you could hold it if you wanted to, and take a chance on the results, or did they simply ask you whether you wanted to sell the stock? What was said to you about the reasons for offering you the

\$250 for that stock? A. The reason for offering the \$250 for the stock I understood was that this company wanted the controlling interest. Q. And you knew the company had made the contract with Mc-

Murtry? A. Yes. Q. Was there anything said to you by your brother at the time this offer was made

(Deposition of Frederick S. Thorn.)

to you, that it looked as though the Government was going to try to take those lands away, on the question of the development of the lands, and that if they did, your stock would not be worth anything? A. I think there was something of that kind stated, yes. Q. In other words, your brother advised [357—251] you, as I understand you, to sell that stock and take the \$250 and get out? Mr. HALL.—I object to that, because that has never been testified to by this witness, that there was any such understanding. Mr. ACH.—I move to strike out the objection as suggestive and leading to the witness on the stand, called by the Government. Q. Did your brother say anything to you on the subject as to whether he thought you ought to sell the stock out on account of any possible action by the Government, and the effect of the action, in the event that it should succeed, on your stock, or the value of it? A. No, sir. Q. Didn't say anything about that? A. No, sir. No, I never revoked the power of attorney. Q. Did you ever tell anybody at any time that you were a fake or a dummy locator on these lands? A. No, sir. Had no intention of defrauding the Government through these locations or otherwise. [358—252]

**Deposition of Julius F. Harder, for Plaintiff.**

JULIUS F. HARDER, called April 21, 1917, on behalf of plaintiff, testified by deposition as follows:

Have resided in New York City since 1887, with the exception of two and a half years from 1891 to 1893, when I was in Chicago. Am an architectural

(Deposition of Julius F. Harder.)

engineer and was practicing architecture with an office at 31 West 31st Street, in December, 1907. I became a stockholder in the Empire Oil & Development Company in 1906, I think it was, was elected a member of the board of directors and later vice-president. Was vice-president in 1907, and L. B. McMurtry was president and was in New York more of that year. The office was Barclay Building, 299 Broadway. I visited the office on an average of about twice a week, mostly after four o'clock in the afternoon. E. A. Hoeppe, C. W. Thorn, Frank Searls and F. H. Harrison were employed in the office. Daniel W. Darling, S. H. Freeman, John B. Thickens and Powell were there more or less. A man by the name of William C. Lewis and three or four others were there, in and out. Darling was a stockholder. Don't recall whether Freeman was or not. Freeman was not employed in any capacity that I recall. Lewis was a director and was quite heavily interested in the company. Thickens was a stockholder, but don't recall that he was an employee. Don't know whether he was an officer or not. C. W. Thorn was I think assistant Secretary. My recollection is somewhat hazy about the officials, but Harrison, Hoeppe, Searls and Thorn were respectively treasurer, secretary, assistant secretary, and assistant treasurer at various times. I knew Hoeppe in Chicago in 1890, where I was practicing architecture when Hoeppe was an engineer, and in a way our professions overlapped. And when he came to New York about [359—253] 1904 our

(Deposition of Julius F. Harder.)

acquaintance was renewed. We became fast friends in Chicago, being members of the same Club and having offices in the same building. I met McMurtry through Hoeppner. Became a stockholder in the Empire Oil & Development Company about 1906, under the following circumstances: Hoeppner told me that he had made the acquaintance of Mr. McMurtry, that Mr. McMurtry was a miner, and oil expert from California; that Mr. McMurtry was a very great authority on oil production and oil matters generally; that he wanted me, he asked me to join him, Mr. McMurtry, in their oil business, and what they had in mind and in view of the operations that they were going to undertake, and that Mr. McMurtry was then in New York on that business, and he wanted me to raise all the money I could, to induce all the friends I could induce to do so, to join and invest their money in this oil enterprise. Think Hoeppner first met McMurtry after he came to New York. At first Hoeppner only devoted part of his time to the oil business; afterward he resigned his business with the National Fireproofing Company and devoted his entire time and attention to it. Hoeppner told me that he was going in with McMurtry, and if necessary, was going to go broke on the oil venture; that he was going to devote his entire energies and time and money and everything to McMurtry's enterprise; and he incidentally told me that he was going to be, that the understanding was that McMurtry said he was to be a half partner. After my conversation with both McMurtry and

(Deposition of Julius F. Harder.)

Hoeppner, which followed upon this series of talks with Hoeppner that I have outlined here, I began to give Mr. McMurtry sums of money; I think it began in 1906, along in the fall; I would give him sums of \$100, \$150, \$200 and \$250, on a general understanding that we had had. I was not then a stockholder in the company, and at Christmas time, 1906, I received with a letter [360—254] of transmittal from McMurtry, 2,000 shares of stock in the Empire Oil & Development Company as a Christmas present jointly from McMurtry and Hoeppner. Hoeppner had asked me to invest all the money I could to back McMurtry. That was the way he said it, to “back McMurtry with all the money you can possibly raise. If you have any money in the savings bank, or if your wife has, back Mack with it. This is going to be a great enterprise, and a lot of money in it, and while there are risks involved, this man is a wonderful expert on the oil business and you back it with all the money you can raise, and I am going to do the same thing, and I am going broke on it.” I accepted it as a proposition, as I had full confidence in Hoeppner, and after I had set McMurtry and had talks with him, I thought of it, and I felt confident that it was a very good proposition. Shortly after receiving this stock as a Christmas present, in about 1906 or 1907, I was elected a director. This 2,000 shares was the only stock I acquired in the Empire Oil Company. Don’t recall what the resources of this company were prior to December 1st, 1907, only in a general way that there



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was an option on some land which had been proven, I recall that one of the wells was a water well, there were drillings going on, derricks erected, well, there was a large area of land which had been located, but I do not recall at the present time the exact location of that. I didn't pay much attention to the field operations. Left that to Hoeppner and McMurtry. All that I got in the way of information as to these technical oil matters was what I gathered, I should say, during intermittent conversations. Paid no particular attention to that part of the business. It seems to me that a banker, Ladd & Stratton and others whose names I do not recall, held this land either through locations or as patented land, in the Southern part of California. I destroyed [361—255] all the old Empire & Development stuff in 1912, and have nothing to refresh my memory. Had a general cleaning up of my office at that time and destroyed all my old papers. Yes, I did hear Chicago locators mentioned. Q. Do you know whether or not the lands held by the so-called Chicago locators were the lands that were being claimed by the Empire? A. I don't know that. My impression, however, is that they were not. McMurtry treated the Chicago locations even at that time as being defective, and he placed no reliance upon them. My recollection is that I never knew him to treat them, in 1907 I do not recall that he ever treated them in any other way in referring to them. Q. Well, do you know whether or not the Chicago locations were considered as part of the assests of the Empire

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Oil & Development Company? Mr. ANDREWS.—Objected to as calling for the conclusion of the witness and the state of mind of somebody else; as cross-examination, leading, suggestive and improper. A. No, I do not, but— Mr. ACH.—Wait a minute. What is the question, whether he knew? Mr. HALL.—Whether he knew how he treated them. Mr. ACH.—Read the question. Q. (Question read.) Mr. ACH.—Now I want to add to the objection, the objection that the subject had been covered, and that the witness has testified that the assets of the company consisted of options on located lands upon which there was drilling, etc., and that this is useless repetition of the same question and already answered. A. I think I started to answer, didn't I? I think I said no, I did not. Don't recall that I ever had any of the official records of the Empire Company. I had a mass of correspondence from McMurtry and Hoepfner, Searls and Thorn, Harrison and others, and they were more or less connected, they were dealing with the business of the Empire Oil & Development Company in a personal way; I don't know that they were official records. I never [362—256] had custody of the records of the company. They were in charge of the office, the secretary and treasurer, the assistant secretary and assistant treasurer, Searls and Thorn were the two men that had those matters in charge. The records were all sent to McMurtry, to San Francisco, at the time of closing up the office, along about August or September, 1908. I never examined the re-

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cords to ascertain what the assets and resources of the company were. Q. Do you know who claimed the right of possession of those so-called Chicago locations during 1907? Mr. ANDREWS.—Objected to as leading, suggestive, cross-examination, assuming that somebody claimed the right of possession, when the witness has already specified that they were treated as defective, as far as he knew. A. No. I don't know whether there was any business transactions carried on in 1907 with reference to these Chicago locations. Don't know on what tract of land this drilling was being done or where they got the water well. That exists in my mind at the present time through photographs that we had of the tracts. As I recall those photographs, they showed three derricks. Now, one of those wells had been sunk as an oil well, and a water well. McMurtry explained that that was more fortunate in that territory at that time than otherwise, and that a water well was more valuable than an oil well. That explanation was made during the latter part of 1906 or the period during 1907. My recollection is that this particular tract was one upon which we had an option. Don't know the legal description of the tract on which the water well was. Q. To refresh your memory was that either known as the Oregon-Midway well, or the Stratton water well? A. I think it was known as the Stratton water well; the other designation I do not recall.

Q. The records of Kern County, California, discloses that there is therein recorded a power of [363



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—257] attorney which purports to have been executed by J. F. Harder, before Samuel C. Worthen, a notary public (substance of Plaintiff's Exhibit 7 stated). Are you the J. F. Harder who executed that instrument? A. I am. That was signed at 299 Broadway, previous to McMurtry's departure of California. McMurtry wanted to get back to California previous to the first of January because options were expiring and locations were coming to their legal end and there were other matters there which required attention, and previous to his leaving New York City this document was signed by myself and others. The general matter of locations had been the subject of general talks between McMurtry, Hoepfner and myself. We had concluded that we would give up our efforts in the affairs of the Empire Company by reason of the financial and industrial conditions—give up both attempting to sell stock and attempting to negotiate loans in order to carry out the purposes of our oil development company. I didn't understand that the Empire Company was actually getting oil; but they were operating generally in the Southern part of California, Midway and San Benito; there was also another location that I do not recall. No one specifically asked me to execute this power of attorney. I had had talks with Hoepfner with reference to the matter of location, and being a locator myself previous to his leaving New York, which was at least nine months previously, or a year previous, so that I knew about, in a general way I knew about, I knew

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about the matter, and when this, when McMurtry was leaving and we were giving him these powers of attorney, no conversations or further explanations were necessary, so far as I was concerned. So far as I know, McMurtry prepared it. Somebody may have prepared it for him, some counsel, but as far as I am concerned, McMurtry prepared it. Q. Do you remember of any specific conference [364—258] between yourself and McMurtry, and the others who were connected with the Empire Oil & Development Company, just prior to the execution of the power of attorney? Mr. ACH.—You mean about the execution of the power? Mr. HALL.—Yes. A. I think probably it must have been perhaps two or three weeks previous to this date that affairs were shaping themselves so that McMurtry were going to leave New York for California, and he wanted these powers of attorney, and we had a general talk about it and he said that he wanted to get the names of responsible men, men who were citizens and who were voters and who were in good health and who knew what they were doing, and he didn't want any irresponsible people or people that hung around barrooms, or something of that kind. I think that is the way he expressed it at the time. In other words, he wanted responsible citizens who were voters and could be found when they were wanted. Something of that character. I remember that talk by reason of that circumstance which is clear in my mind, and at that time I know it was said that you attend to this and you attend to that, and others were given

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to some, and others were given to Powell and Thickers particularly, and this one that I signed was done right in the office, it was done without being requested to sign, and the men who signed these were men who were more or less in the office.

Q. When Powell and Thickers were delegated to do certain things, tell me the nature of those certain things, if you know? A. To get the names and procure certain individuals and explain that certain kinds of individuals, as I have described, after McMurtry had described to me what was wanted, and to secure their assent to the giving of this power of attorney. Q. Was Mr. Julius W. of J. W.

Pentz in the office of the Empire Oil & Development Company? A. No, he was not; he was the only man I didn't know. Didn't know Frank D. Yatlor very well. He [365—259] was not in the office of the Empire Oil & Development Company. Q. How did you learn that the power of attorney had been prepared and was ready for your execution?

A. My recollection is that in one of the rooms, it was there on a table, waiting for my signature; there may have been someone else there, Mr. Thorn, Mr. Searls, Mr. Harrison, or Hoepfner, who said to me, "There is that power of attorney ready for you to sign." No, I was not called specifically for that purpose; that was during a period I was down to the office at least twice a week, and I saw someone connected with the company probably every evening. My recollection is that McMurtry left the city in time to get to California by January 1st.

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Don't know but what he got there for Christmas, 1907. Searls went to California some time in 1911 or 1912, I should say. Harrison went, I should say, in 1908 or 1909. Q. What was the purpose of Mr. McMurtry's leaving the city in 1907, if you know? A. Well, there was nothing more for Mr. McMurtry to do in New York City. What we were attempting to do we had to give up because of the financial crash in 1907, in October, we had concluded that we were about through with frenzied finance and we were going to take off our coats and go to work in a small way. I was to remain here as vice-president of the Oil Company and handle the affairs as best I could. McMurtry told everybody here that I was to act in his place and stead, and gave me full description of the powers to do that. He told all the other men that that is what he wanted done. Now, he was going out there—Hoeppner was already in San Francisco—and Mr. McMurtry was going out and Harrison was to go soon thereafter. Now, these three men in California were to gather whatever other assistance they could, physical, financial and in every other way, and they were going to locate lands and were going to explore oil. The understanding [366—260] was not in the big way we had intended before, but in a small way, we were to attempt to do in a small way what we had failed to do in a large way. Q. For what concern, if any, corporation, if any, or individuals, if any, were these transactions to be carried on in this small way that you speak of? A.

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Well, now, that was to be done directly for those who were standing with Mr. McMurtry at that time, the idea being that if we, those that were associated with him, as I was associated with him, that if we got on our feet, we would be enabled to pay the debts of the old company, clean out McMurtry's personal indebtedness that he had incurred by reason of the old company, and satisfy the stockholders of the old company who were clamoring and accusing the agents of Mr. McMurtry of making false representations, they were denouncing the company and its methods for its failure, and they were clamoring to have their money back. Now, the proposition was that if we made any money, we would satisfy these stockholders of the old Empire Company, and in the course of time there would be a new company formed which would be representative of those who were contributing their efforts and physical work and capital to the accomplishment of this purpose.

Mr. ACH.—I move to strike out the answer as not at all responsive to the question. It would be better if you just answered the question. Q. In your last answer you have referred to the old company. What company do you mean? A. The Empire Oil & Development Company. Q. Was it your purpose at that time to entirely abandon the affairs of the old company, or to try to rehabilitate them and get the corporation on its feet again? Mr. ACH.—I object to the question as to the purpose of this witness, for the reason it is not pointed to any act or acts, whether the giving of the power of attorney,



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the entering into some small enterprise with Mr. McMurtry out there, [367—261] whether it had reference to the powers of attorney, which locators were obtained of persons, or whether it has reference to anything that Mr. Hoeppepner might do, or whether there was any conversation between this gentleman and these other people, as to whether these powers of attorney were to be used for the purpose of rehabilitating the corporation, or whether it was done for the purpose of defrauding the Government, or for any other purpose. Mr. HALL.—We object to such a detailed— Mr. ACH. The point of the purpose is not stated. Mr. HALL.—The objection is highly improper in that it consists of an argument at this time stating counsel's position in the matter. Mr. ACH.—I am not making an argument. I am pointing out the thing to you, just as to anybody else. Mr. HALL.—As well as to everybody else. Mr. ACH.—Yes, as well as to everybody else; yes, sir. I cannot imagine his purpose. A. What is the question, now? Q. (Question read.) Mr. ACH.—I make the further objection that the purpose to which counsel addresses himself is not indicated at all, what purpose is meant by the question, and therefore the further objection is made that the question is entirely too ambiguous for anybody to answer. Mr. ANDREWS.—And the further objection that the word "or" there is ambiguous, because it does not designate in any way whether he means the witness or various persons to whom attention has been

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called. Mr. ACH.—That is what I intended to say, but I guess I didn't say it. The WITNESS.—Answer? Q. You may answer, Mr. Harder. A. Why, we did not abandon the old company. The stockholders abandoned us. All we wanted to do was to satisfy their clamors and demands. They were willing to be satisfied and we were willing to satisfy them. We were not abandoning them, consequently there was no such question of rehabilitating the old company. All they wanted to do was to be square with them and in any way, shape [368—262] or manner, and we considered it a matter of honor, who had managed the old company and solicited these funds, and to satisfy them in some way. That is the exact situation at that time in the best way I can describe it. No, I received no advice or information as to what use had been made of this power of attorney prior to January 1, 1909, nor did I made any inquiry of anyone. I received a number of letters from Hoeppner during that period, and from McMurtry also. They have all been destroyed. Hoeppner told me of his personal life and business. McMurtry's letters pertained to the business that we were still transacting here until December, 1908, with the old Empire Company. We had gotten started after a foreign loan, and McMurtry was writing me concerning the matter, and also asked me to help out with sums of money; he asked me to give sums of money to Searls, Thorn, Freeman and others on his account, which I did to the extent that I was able to do so.

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Cannot recall that McMurtry, during 1908 apprised me what was being done with any lands that were then under location. No, I did not receive during 1908 and advice as to a contract that had been entered into between Mr. McMurtry and Mrs. J. M. McLeod for the development of section 32, township 31 south, range 23 east, in Kern County California. Nor did I receive any advice during 1908 as to what development operations were being carried on under McMurtry's direction upon oil lands in California. Nor was I apprised or received any information with reference to a conveyance by McMurtry to H. C. Stratton of any interest in the land embraced in Sec. 28, township 31 south, range 23 east, in Kern County. The first information I had that McMurtry had located any lands in Kern County in my name I think was at the time of the ratification of the power of attorney. Yes, I had made inquiries. I inquired in my letters to McMurtry, and of Hoepfner I inquired constantly [369—263] as to what they were doing. No, I did not receive any specific advice as to what land had been located by the use of my name. My recollection is that that ratification (Plaintiff's Exhibit 24) was brought to me by McMurtry, either in my office or he asked me to come to the Knickerbocker Hotel. I don't remember just which. But it was about the time McMurtry was in New York. He said he had a deal on of some kind; that in order to put it through it was required that this ratification should be given in order to cover the interval



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of time between the original power of attorney and this date, showing the persons were still living, competent of disposition; that is about all. There was considerable talk about what they were doing generally and what they were seeking to accomplish. The substance was to the effect that he had repeated the details so often that he was tired of it, and he said, "Now, there is not any use to repeat to you all the troubles and difficulties we are having out there, but we are getting on our feet, and there will be a big melon to cut some time in the future." The first time I learned definitely of any modification or supplemental contracts that were made by McMurtry and Herrin, or the Associated Oil Company, was when McMurtry told the story on the witness-stand in San Francisco. Prior to that I only knew that this general deal that he had on was progressing favorably. I heard more about that when he came back and gave me \$250 and 1,000 shares of stock in the Pacific Oil Lands Company, September, 1911. This \$250 was paid me in cash and I signed what I understood to be a receipt, an evidence of the payment of \$250 having been made to me, of bookkeeping record. It was a check. It was in the form of an endorsement on the back of a check. I understood that \$250 was a dividend that was coming to me by reason of my interest with McMurtry. My understanding was that [370—264] this receipt on the back of the check was presented to me for the purpose of keeping books. Yes, this original check was exhibited and acknowl-

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edged by me while on the stand in San Francisco in November, 1916 (Attention of witness directed to page 700 of the record in suit A-38, United States vs. Thirty-two Oil Co. et al.). That is a copy of the check I received in September, 1911. The typewriting above my signature was there when I signed it, and I read it. Do not recall whether I read it before or after signing it. Left the check on the table after signing, and assumed that McMurtry took it. I received \$250 in cash from McMurtry in five-dollar bills. He said he had \$250 cash he wanted to give me and I told him I didn't need the money at that time. Rather he would keep it and add it to the other money he had of mine. He said no, they had all the money that they needed at the present moment, and if they needed more they would call on me; and he said, "There is the receipt over there, if you will sign it for bookkeeping records." I picked up the piece of paper and saw it was a check for \$250, and I said, "Mack, what am I to do with this? I see it is a check. I understood you to say you were going to give me \$250 in cash," and he said, "Yes, but I want you to endorse that on the back and I am going to cash the check." That is substantially what occurred. There was considerably more conversation, and, while I was signing the check and reading what was on the back of it and getting this explanation, Mr. McMurtry and I were in a running conversation during this short period. Yes, this certificate of stock was delivered to me at the

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same time. I could not identify this certificate No. 24 as the one. But I don't see why it should not have been. That receipt on the stub of certificate No. 24 contains my signature. Concerning that certificate, McMurtry told me in addition to the \$250 which he gave me, he [371—265] said he was giving me a certificate for 1,000 shares in a new company that had been formed; that this was to be a small company and they were not going to sell any stock and this interest would be only to those who had stood by him in his troubles and difficulties, and to whom he was under obligations, those that had assisted him by services and financially; that matters were progressing very favorably, and he wanted me to take care of this certificate of stock very carefully and put it away in my safe and never let it get out of my possession. He said some day "that is going to be worth a great deal of money." No, I did not then know what the resources and assets of the Pacific Oil Lands Company were or what lands were held or owned or offered by it, or the capital stock, or definitely who the shareholders were. I had a general idea from what Mr. McMurtry told me as to the number and character of them. Did not know the various holdings of the different stockholders or the respective proportion of such holdings, or how many tracts of land or placer mining claims had been located upon in which my name had been used as a locator. The only thing I knew as to any transfers, leases, deeds or contracts which McMurtry had made act-

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ing under the power of attorney of December 18, 1917, affecting lands which had been located under such power was the information received from McMurtry, which was general in its character. Was not advised specifically of the assignment of those contracts with Herrin and others or with the Associated Oil Company to the Pacific Oil Lands Company. The next transaction in this matter I think was in December, 1913, I think Mr. Thorn came to my office with a form of assent to distribute profits in the Pacific Oil Lands Company, and my recollection is that Mr. Thorn came to my office and said that Mr. McMurtry had asked him to come to see me to sign that assent, as [372—266] it was necessary to have unanimous action by all the stockholders, and I listened to what he had to say, and I said I would consider it, and I signed the assent and sent it to Major Hoepfner. Yes, I have a sort of recollection of a proxy. Thorn came to my office, I think, twice. On one occasion I know he had come from California. He brought a box of preserved California fruits with him. Now, what he had, what else he had at that time, whether it was some other document or documents he wanted to sign, I cannot remember.

(Plaintiff's Exhibit 25 with this deposition introduced. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Julius Harder, December 9, 1913.) [373—267]

Yes, I signed that paper (Exhibit 25). My rec-

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ollection is that this was brought to me by Mr. Thorn, who asked me to sign it, as I have stated, and I said that I would consider it, and I did sign it, and sent it on to Major Hoeppepner with a letter of transmittal. That letter is in the record of the San Francisco trial. Yes, that is the letter copied at page 713 of the record in suit A-38 (same being as follows):

“Major E. A. Hoeppepner,  
Room 750 Mills Bldg.,  
San Francisco, Cal.

Dear Major:

I enclose you the consent desired. I am very glad to hear that you fellows are doing so well as to be able and desire to distribute profits. I do not know what is coming to me in this way but if agreeable to you I would prefer that you should retain it and apply the same on account of what I owe you. I trust to be able in the early part of the year to settle up in full my indebtedness to you.

Wishing you a Merry Christmas and Happy New Year and with the best regards and kind wishes to McMurtry and Harrison, I remain,

Yours very truly,

JULIUS HARDER.”

I was then indebted only to Hoeppepner personally. I had borrowed \$1,000 from him. No, I did not consider that McMurtry was indebted to me at all. That money I had given him, I had given him in the light of the talks I had with McMurtry and Hoeppepner; that was money which I gave him to be



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used in our business. I was his business associate to that extent which I contributed this money to him, so I did not ask him for any repayment of it, or consider it as due me. The next transaction was the receipt of a dividend check for \$20, I think in January, 1914. Q. I invite your attention now, Mr. Harder, to a check, in substance, as follows:

San Francisco, 1/9/1914. No. 1190. The Bank of California, National Association, San Francisco. Pay to the order of J. F. Harder, Twenty Dollars. (Signed) Pacific Oil Lands Co., by F. E. Harrison, Secy. & Treas. L. B. McMurtry, Vice-president. [374—268]

The endorsement on the back is: "J. F. Harder. Julius F. Harder." Is that the check you received, that you have referred to as the dividend check? A. I should say so. Yes, the assignment dated March 23, 1914, to which my attention is called, on Certificate 24 of the Pacific Oil Lands Company bears my signature. I think Searls came to my office and asked me to sign the same. He said he had been sent by Mr. McMurtry to get my certificate of stock in the Pacific Oil Lands Company, and to give me \$500 for it. I told him if Mr. McMurtry wanted my shares, my stock certificate, I thought he ought to write me the purpose and the reason for it, and to tell me all about the condition of oil affairs and what was going on, and what was being done, and why this request was made of me, the reason for it. He said if I thought there was anything wrong about it, to wire to McMurtry

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and ask him about all those particulars. I did not wire. I told Searls I thought such an explanation should come from Mr. McMurtry under the circumstances, and he said very well, he would wire to Mr. McMurtry and have Mr. McMurtry wire me to give Searls the certificate for \$500. I received a telegram to that effect from McMurtry the following day. I thought it over and sent the certificate to Hoeppner," with a letter. The telegram I received from McMurtry (as taken from page 725 in suit A-38) is as follows:

"San Francisco, Cal., 23 J. F. Harder,  
120 W. 32nd St., New York City, NY.  
Transfer of stock in bank for sum of five  
hundred meets with approval here and the  
amount will be held to apply on your account  
with Major as per your request. L. B. Mc-  
Murtry, 849 Mills Bldg."

In the letter I sent to Hoeppner with the certificate, in substance I stated the fact of Searls' visit and wanting the certificate for \$500, and I said I distrusted Searls and could not get any information from Searls as to the condition of the oil business and what [375—269] they were trying to do. I therefore sent the certificate to him, and left it in his keeping for him to use in his discretion. I received nothing directly from Hoeppner in response. I understood that whatever the certificate, whatever the actual value of the certificate would be, would be credited against my borrowing of \$1,000 from Major Hoeppner. I have never had any specific

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statement to the effect that \$500 was credited against that loan until the Saturday after McMurry was on the stand in my room in the hotel, and upon my questioning Major Hoeppner personally there, he told me that he had credited me with \$500 on that certificate against my loan of \$1,000. That was in the hotel in San Francisco, about November, 1916. Q. Have you ever received any money, credit or thing of value, since that time, on account of these oil land transactions? A. I received further dividends until, I received further dividends until the preceding 1914, I think. What further dividends did you receive? A. They are all in the other record. As I recall, there was another dividend of \$20, one of \$40, and I think one of \$100. Q. How did you deceive these dividends? A. By checks, checks from the office of the company, through Major Hoeppner. No, at the time I surrendered this certificate 24 I did not know how many locations had been made on public oil lands in California or elsewhere by McMurry under the power of attorney of December 18, 1907, in my name. Yes, I had sought advice on the subject from McMurry. The reply was that McMurry's prognostications as to the oil lands—I can only give you the substance and not the exact language—were being borne out; the lands would become very valuable; that when there was any definite results or definite information to give myself and all the other men in the east would be fully advised, would receive complete reports. No, did not know the assets

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or resources of the Pacific [376—270] Oil Lands Company, when I surrendered certificate No. 24, nor that the contract of August 4, 1910, the supplemental contracts between Mr. McMurtry and Her-  
rin and others and the Associated Oil Company, had been transferred to the Pacific Oil Lands Company. No, since surrendering certificate 24 I have not been a stockholder in the Pacific Oil Lands Company.

Cross-examination.

Yes, the original correspondence between myself and Hoepfner and McMurtry that I did not destroy was produced in court at the trial in San Francisco in suit A-38. Don't recall seeing McMurtry between the time he left New York in December, 1907, and the time I signed the ratification in August, 1910. Was living in Queensborough, or County, New York, in 1910. My attention being called to the fact that this ratification was acknowledged before a notary public by the name of Beam, in Queen County, New York. I do not know Notary Beam. McMurtry may have brought this ratification to my house in Queen County, New York. Mr. McMurtry may have been in New York on Saturday and gave me that paper and we could not find a notary on Saturday; and Mr. McMurtry would frequently come to my house on Sunday, and if he came to my house about that time on Sunday, he may have left that with me for execution the following day, something of that sort. The fact that this paper was executed in Queen County does not further refresh my memory, nor does the fact that

(Deposition of Julius F. Harder.)

it was signed in the presence of W. H. Whidden, 1236 Broadway, New York City. I do not remember Whidden. The only power of attorney that I ever gave McMurtry was the one to which my attention has been called. Hearing the substance of that power of attorney stated (Plaintiff's Exhibit No. 7) will say yes, I understand the import of that language, and read it before signing, and understood that 7 other persons were signing the same instrument. [377—271] Do not recall now whether I understood that there were to be thirty-two in all at that time. I knew there would be others, and that we were signing it so as to place Mr. McMurtry in the position that he could, if he found any oil lands out in California, subject to location, or lands that he regarded as oil lands, locate them for me and in my name, and in the name of my associates. Yes, it is a fact that prior to the signing of these powers of attorney Mr. McMurtry or someone else had imparted to me the knowledge that in California locators frequently made contracts with other persons whereby such other persons would become the owners of part of the land located for the consideration of making the experimental or original drilling upon the lands for oil. Yes, it is a fact that I knew when I signed that power of attorney that I not only authorized Mr. McMurtry to locate oil lands any where in the United States and particularly in California, but also I authorized him to dispose of the lands, to mortgage them, and to make contracts of and concerning the lands, and



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also to lease them. Q. Was there *abt* bargain or agreement or understanding, direct or indirect, express or implied, that McMurtry was to have any interest in the lands that were located in your name? A. Well, I should say in an indirect way, by reason of the fact that Mr. McMurtry and myself were business associates. Now, out of the profits arising out of the product of the land and through the business transacted, the sale of the oil, we were associated in business, and we were financial partners. The principle was there. Q. Was there any writing or agreement to the effect that he was to have an interest in the lands located? A. No. [378—272] No, there was no statement or agreement between myself and McMurtry or between myself and the other locators, that I know of, whereby it was agreed as to any profits derived from the locations or sale of oils or minerals taken from the land that McMurtry was to have any definite amount or definite proportion of either the lands or oils or minerals or net gains therefrom. Yes, I read the ratification before signing. No, I did not know by the reading of that ratification that McMurtry had caused the power of attorney I gave him in 1907, to be recorded in Kern County, California. Yes, I knew from the reading of that paper that he had located oil lands in California in my name and that he had made contracts with W. F. Herrin and other persons concerning lands so located, and that by signing that paper I was ratifying such acts. Yes, McMurtry, when he presented

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that ratification to me, told me that he had gone over the same matter a number of times, and was tired of talking about it, and that he had retained the ratifications of all or nearly all the locators for whom he had acted, or words to that effect. That the attorneys of Mr. Herrin and other persons with whom he had made the contract, insisted that before the contract could be finally determined that it was necessary to have a ratification from all the original locators, and the general understanding was that returns from the contract was problematical, and that the pay, if any there was, was to come out of the oil which might be found on the land. No, I had no intention when I signed that power of attorney to permit the use of my name so that McMurtry or anyone could acquire more oil or mineral lands than was lawful, or to cheat and defraud the United States. Nor did I ever know of any intention on the part of McMurtry to acquire a greater number of acres of mineral [379—273] lands by means of this power of attorney or locations made thereunder than he was entitled to as an individual, nor did I intend that that power of attorney or any action taken thereunder should redound in that way for the benefit of McMurtry, Hoepfner, Harrison, or any other person.

(Cross-examination suspended to permit the completion of the direct examination.)

Direct Examination (Continued).

(Attention of witness invited to papers marked Defendant's Exhibit "C," a letter dated December

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3, 1913, and Defendant's Exhibit "D," a letter dated January 8, 1914.)

After reading papers marked Defendant's Exhibits "C" and "D," I do not recall ever having received similar letters. Yes, I received the dividend check for \$20.00, dated January 8, 1914. My recollection is that it came through the mail from the office of the Pacific Oil Lands Company at San Francisco. I do not recall receiving a letter similar to either of these exhibits with the same.

(Witness' attention invited to three sheets of type-written matter attached together, marked Defendant's Exhibit "E," bearing title, "Pacific Oil Lands Company, First Report to Stockholders.")

Don't believe that I received such a communication with the dividend check. Don't believe that I did; that is all new to me, that is, comparatively new; I have seen this in San Francisco, but the document—I have no recollection of it at that time, 1913, or the early part of 1914. My best answer is that I do not believe I received that or the two letters, for the reason that my letter to Hoepfner about the transmittal of the consent bears a date previous to which I had [380—274] destroyed everything, and subsequent to which I had retained everything; and if I had received them they would be in my files, which I have reached and failed to find.

Cross-examination (Continued).

Yes, I remember about the time I signed this ratification in August, 1910, McMurtry came into

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my office at No. 31 West 31st Street, and talked to me about the general condition in California, as to oil prices, oil, and development for oils, and that I realized that I was ratifying the power of attorney signed by myself and others.

Q. Now, didn't Mr. McMurtry say to you at that time that things were beginning to look—this or substantially this—that things were beginning to look prosperous and his prognostications as to the production of oil on these lands was beginning to be borne out by developments, and that he was going to straighten everything out, and after that was done, could proceed with the development of our interests, as was the case originally? A. As was the "intent" originally, that should have read. Q. As was the intent originally in the old Empire Oil and Development Company? A. Yes, sir. Q. Was it not the intent of the old oil development company to develop lands out in California? A. It was. Q. Did you not so testify in the case of the United States against Thirty-two Oil Company and others in San Francisco? A. I did. Q. You did not intend, did you, by that answer, to say that the proportion of land that were held under locations made for yourself and others, was to be divided among the stockholders of the old oil company, known as the Empire Oil & Development Company? A. No, sir. Q. As was stated at that time? A. No, sir. [381—275] Q. It is true, is it not, Mr. Harder, as you stated upon your direct examination, that it was no longer a question of rehabilitating

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the oil company; that you and McMurtry and others regarded yourself as in honor bound to pay the old stockholders of the Empire Oil & Development Company some day whatever money they had invested in that company; is that not a fact? A. It is.

No suggestion or idea on anybody's part to rehabilitate the old Empire Company.

Q. Was it ever intended that any lands located under the powers of attorney given by you and your associates, if any should be located thereunder, should be the property of any stockholders of the Empire Oil & Development Company, or the Empire Land Company? A. No. Q. Or the Empire Oil & Development Company? A. No.

Yes, I understood that I was given stock in the Pacific Oil Lands Company by reason of my interest as a locator, and paying for work that was done for and on behalf of the locators, in doing assessment work and development work, or whatever was done in the matter of lands located under the powers of attorney. That was the idea I gathered.

Q. And at that time you thought you were getting your full share of what was coming to you, with stock or money raised on stock and which he was paying in order to hold you harmless from liability or liabilities incurred in the matter of locating and taking care of these lands; is that a fact? A. Yes, sir. Yes, McMurtry stated in conversations concerning this ratification, that he was obtaining ratifications of the powers of attorney, in order to avoid



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having to make contracts [382—276] with all the locators. Yes, I know Frank D. Taylor. First met him when the original power was signed. Don't think he was a stockholder in the Empire Company nor was Daniel W. Darling to my knowledge, or J. W. Pentz. Was not acquainted with Francis E. Pratt, William F. Christman, Mark W. Hatch, or Hamlin E. Hatch. Don't know that any of them were stockholders in the Empire Company, nor did I know T. R. Bailey, Walter Wilson, J. E. Farrell, J. F. Romaine, Jr., Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, George W. Berry, George A. Neinecke, H. E. Bashore, R. B. Welch, W. A. Keenan, C. Rupert Walker, William Mahr, or Eugene Metz, nor do I know whether either of them was a stockholder in the Empire Oil Company.

Q. I find, commencing at the bottom of page 697, the following question put to you, in the former trial of this case, in the trial last referred to:

“Q. Now, on the occasion of your seeing him”—referring to McMurtry—“both in 1910 and 1911, did he speak to you about the matter of locations that had been made of oil lands in this state pursuant to the power of attorney you had given him? A. Yes. Our old lands had been—no, some of the old lands, of the old Empire Oil & Development Company, we had lost; but others had been located. We had new lands, lands which were much more valuable and much more promising as to the quantities and grade and character of the oil to be pro-

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duced than the old lands that we had lost, notwithstanding the fact that they had gone to an enormous valuation by reason of his prognostications having been carried out." Did you so testify? A. Yes, sir. Q. Was that the fact at that time? A. Yes, sir. Yes, during McMurtry's visit to New York, in the summer of 1914, he told me that it was the intention of Hoeppepner [383—277] himself to put down a well upon the most profitable land for the benefit of the locators—a locator's well. Yes, at the time Searls came to see me to get my stock in the Pacific Oil Lands Company he said that they were taking up all the stock of stockholders and all the others had been very glad to cash in for \$250 but Mc. had told him to give me \$500, and I inquired why I should have more than the others. No, I did not know that the other stockholders were locators with me upon the lands; yes, I assumed that the other locators held the stock, but I don't know who they were. Yes, Searls said that everybody out here was very much in the dumps because the wells that the Major was putting down were not productive and were no good, but he was going to keep on putting down wells until he got one that was good; that things were very disheartening because these wells were not producing in accordance with McMurtry's expectations of those fields which he had painted as being very rich and productive and profitable and highly valuable for oil. [384—278]

Q. Had you been advised or told that any of the

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San Benito locations or San Benito property had been conveyed or transferred to the Pacific Oil Lands Company, besides the contracts concerning the Midway or the San Joaquin property? A. No. At the time McMurtry came to New York, my understanding was that the properties of the Pacific Oil Lands Company were the lands located under the power of attorney I had given and that they were getting ready to carry on the business of getting oil and selling it and transacting any other negotiations concerning these located lands, and that the proof that there had been oil found there, had been verified, they were now ready to do business, which was a condition which had not existed up to that time; consequently this company was formed to proceed to do business in the same way that we had the old company in New York at the time, but it was to be a much smaller company, in which stock was not to be sold. It was to be a small corporation, including those that had been of assistance to him, the locators and those who were interested with him and who were working here in California.

Q. I find, commencing at page 719, a reference to a letter which you said in your former examination, you wrote to E. A. Hoepfner, and that that letter was dated March 23d, 1914. Have [385—279] you that letter now? A. No, sir. That is still with all my other letters, and the last I saw of it was in court and in the hands of Mr. Lawler.

(Deposition of Julius F. Harder.)

Q. I find in this letter which makes the letter read as follows:

“Dear Major: Searls has just left the office. He wants my certificates of the Pacific Oil Lands Company endorsed over to him. He wants to give me \$500 in cash. He says he has settled with all the others here on the basis of \$250. He gave me to understand that the extra \$250 to me was because he thought so highly of me. I told him I appreciated all this, and that if you or McMurtry wanted my shares you could have them at any time for the asking.

“I don’t, know anything about the oil business, and you may recall that Mr. Searls and Mr. Thorn at one time despaired of my ever learning it. I am rather inclined to believe with them now.

“I told Searls that, of course, you and Mac could have my stock for \$500 and that as I owed you more money than that, I would send the stock to you endorsed to you over and you could give me credit on what I owed you for it so as to avoid the unnecessary transmission of checks and money, together with collection charges thereon both ways. Searls seemed to have the \$500 cash right in his pocket, however, and it seemed to be burning a hole through the bottom. The more I suggested that I send the certificate to you the more insistent he became that this was quite unnecessary. He wanted me to wire to Mac and then he intended to wire to Mac and I had the greatest difficulty in getting him out of the office.

(Deposition of Julius F. Harder.)

"I do not believe a word that he says and he arouses my distrust and suspicion more now than he has ever done before. What it is all about I do not know but I will certainly not endorse [386—280] my certificate over to Searls and I will certainly not take any money from him. I do not believe that it is possible for him to be sincere with any person on the face of the earth. I received the check for \$20 dividend in January. Enclosed please find my certificate endorsed in blank. You may do anything you like with it. If you want to give it up for cash you may credit me with the amount against my indebtedness to you.

"Yours very truly,

"JULIUS HARDER."

Did you write such a letter to Mr. E. A. Hoepfner at that time? A. Yes, sir, I did. Q. I find on page 723 you were interrogated concerning a telegram sent by you to Major Hoepfner, which appears to be dated, March 23d, 1914, addressed to Major E. A. Hoepfner, San Benito, Cal., as follows:

"Decline Searls offer five hundred for stock mail you today.

JULIUS HARDER."

Did you send such a telegram? A. Yes, sir. Q. Did you mail him that stock that day in that letter? A. Yes, sir. Q. Did you not receive an answer from Mr. McMurtry, dated San Francisco, Cal., 23—this is at page 725 of the record—reading: "J. F. Harder

120 W. 32nd St., New York City, N. Y.



(Deposition of Julius F. Harder.)

“Transfer of stock in blank for sum of five hundred meets with approval here and the amount will be held to apply on your account with Major as per your request.

“L. B. McMURTRY,  
849 Mills Bldg.”

A. I received that telegram, but it was not in answer to anything I had sent to Mack. Q. Did you not receive the following letter from Mr. — substantially the following letter—from Mr. Hoepfner, dated San Benito, March 24th: [387—281]

“San Benito, Cal., 3/24/1914.

“My Dear Old Harder:

“Your telegram of the 23rd reached my hands O. K. Same was relayed over country telephone lines a la stage. Am away out in the wilds. Had a good broad grin on my jaw when I read your telegram. Good! I hope you handed it good to that—” then he applies some epithets to him here—  
“—our.”

“I am onto him as big as a house. In the case presented to you I was not aware that Mac had instructed him to gather in all small ends of stock. I thought Harrison would do it. It was a matter that Mac, Harrison and myself decided to, thinking it best to take up the small amounts of stock and thereby cut out a big bunch of correspondence and accounts. I will await your letter. It may be possible that I will have to give that cur a punch in the jaw. In the meantime I will see what is reported from the office. Am busy rigging up a new hole

(Deposition of Julius F. Harder.)

Don't like the looks of the other one. That all goes in the game. How is business with you?"

Did you receive such a letter from him? A. Yes, sir. Q. Did you receive a letter dated March 31st, signed, "A. H."

"San Benito, Cal., 3/31/1914.

"My Dear Old Harder:

"Your letter of the 23rd inst. reached my hands today. Good work. I would not trust that S. of a B. any further than I could see him. D-m cur hides behind Mc. I'll get him out behind some day & back him into a corner. He's afraid of me, hence that intense desire to get that stock himself. Before I get through with him I'm going to or hope to make a first class lair out of him & make him swallow it at that.

"I'll hold the stock for the time being & await developments. I even did not know the S of B was in New York. [388—282]

"When I sign it 500. will be credited to your account by myself. You could not have pleased me better, than to take the stand you did. Will report as soon as I get a statement.

"Your,

"A. H."

Did you receive that letter in due course? A. Yes, sir. Was it not signed "E. A. H."? Q. No, not according to this. A. Well, it should be "E. A. H." Q. I now find a letter in the record commencing at page 730, purported to be written by you to the

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Major, at San Benito, dated April 13, 1914, reading as follows:

“April 13, 1914.

“Major E. A. Hoepfner, San Benito Cal.

“Dear Major: Your. two letters duly at hand Searls hung around here pretty patiently and finally failed to turn up again as he said he would. It appears to me that he must have received a telegram from Mac advising him that you had my certificate. He did not say a word which I would construe to mean that you and he were not the dearest friends in the world. He did not say much about Harrison, and in fact while he appeared to be very sympathetic and invited me to lunch he did not give up very much information about anything. He did know what the amount of fare was to San Francisco and how long it took to get there, also that he was going back over the Southern route but he was sure not going to stop off to see you. San Benito was many miles East of the way he was going. He told me that your attention was very much absorbed by the second well that you were putting down and that everybody was disappointed that the first one had been a failure.

“At the time that he saw me last that he had all the certificates except mine and that morning another one which was [389—283] still outstanding had arrived from South America. I told him as he had them all except mine he need not bother waiting around for me, that I thought it would be better to deal with headquarters direct. He seemed to be

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very much hurt at this and said that I appeared to have some objection to himself. I did not reply to this suspicion but anyhow he said he would come in again, which he never did. I had no objection to his coming in again.

"He did not tell me what his own connection was at present with yourself and Mac. I told him that I had reached the conclusion that he was right when he said that I never would learn the oil business. He could not recall that he had ever said it and I told him that whether he did or not it was true that I sure never would understand it.

"I don't know that it is all about but he sure was some anxious to get that certificate, and for some reason which he did not confide to me and he was apparently very anxious that whatever I did with it I should not send it to you.

"Trusting that you are well and enjoying good health, I am,

"Yours very truly,

"JULIUS HARDER."

Did you send that letter? A. Yes, sir.

"Q. Now, I find a letter reading as follows:

"San Benito, Cal., 10/9/15.

"My Dear Julius:

"Put enclosed check for 100 bones in your jeans. Haven't signed up your document yet. When things like above come along I will save them for you."

Did you receive such a communication from Mr. Hoepfner? A. Yes, sir. Q. Was there a check enclosed? A. Yes, sir. Q. Was that letter left in

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San Francisco? A. Yes, sir. Q. What was [390—284] the check for, \$100? A. The check was for \$100. Q. Did you get it? A. Deposited it in the bank. Q. Had you given anything to anybody for that \$100? A. No, it was a dividend check on my stock. Q. And the next communication is dated November 6th, 1914, and is as follows:

“My Dear Harder:

“Yours of the 7th received Saturday. Mail goes out this A. M. Don’t you worry about owing me anything. I have another draft for \$20 payable to your order which I received from the office.”

Did you receive such a letter from Mr. Hoepfner? A. Yes, sir. Q. Did you, pursuant to his suggestion, write a letter to the Pacific Oil Lands Company, referred to in that letter? A. Yes, sir. Q. I note the next letter from which there is any quotation is dated December 15, 1914, as follows:

“San Benito, Cal., 12/15/1914.

“My dear Harder:

“Enclosed please find check for forty bones. Put that in your jeans O. K. Every little helps. Best regards. etc. Will probably be able to get up to the city next week.”

Did you receive such a letter, Mr. Harder? A. Yes, sir. Q. From the Major? A. Yes, sir.

Q. I find another letter on the same page, namely, 740, dated January 7th, 1915, as follows:

“San Francisco. 1/7/15.

“My Dear Julius:

“Your Christmas Greeting received O. K. En-



(Deposition of Julius F. Harder.)

closed please find that draft for twenty bones. Put that in your jeans O. K.

“I find our mutual friend S. acting as a sort of private secretary for Mac. We are gradually getting our affairs straightened out. We are having our affairs straightened out. We are having some wet weather I hear, which speaks well for good crops.”

Q. Did you receive such a letter from Mr. Heoppner? [391—285] Yes, sir. Q. Did you receive the check for \$20 mentioned in there? A. Yes, sir. Q. For what purpose was that check sent to you? A. Dividend check from the Pacific Oil Lands Company stock which he held.

No, I did not know at the time I received the 1,000 shares of stock in the Pacific Oil Lands Company how much stock had been issued. I inferred some of the stock had been transferred to Harrison, Searls, Kay, Hoeppepner and McMurtry, though nothing was said to me about the amount issued to either of them. No, there was no contract made with McMurtry relative to his compensation in the event he should make locations which turned out to be profitable, or as to the amount he was to receive, nor was any contract made with Hoeppepner as to the amount he should receive for advancing money or doing any work for the locators, if he did any. As vice-president of the Empire Company, I never had in my possession the financial records, books or accounts of such company. No, I did not know what lands had been located by McMurtry for the Chicago

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people at any time. Nor did I know prior to going to San Francisco that McMurtry had filed locations for me and my associate locators upon some lands that he had undertaken to locate for someone else. Yes, I understood at the time McMurtry paid me \$250 for my Pacific Oil Lands Company stock that he had received any money on account of the sale of lands. Understood that he had received just enough to pay each of the locators \$250. No, had not the slightest idea that he had received as much as \$75,000 or \$80,000 for that. Yes, I then had absolute confidence in McMurtry. Yes, I knew Hoeppner was aiding and assisting him. Yes, I still had confidence in McMurtry and Hoeppner. Yes, my understanding was that McMurtry's interest in the situation was to be determined by the action of [392—286] the locators as to a fair share of the returns and profits from the enterprise. McMurtry was to devote all of his time and energies to making locations and protecting them. There had been no conversation with reference to what the remuneration or compensation of McMurtry should be. No, prior to going to San Francisco in 1916, I had never seen any power of attorney or copy of one executed to McMurtry by Chicago people, nor had I ever had any talk with McMurtry or Hoeppner prior to that time about such an entry. No report was ever made to me by McMurtry or Hoeppner as to the land or money that was spent, either upon San Benito lands, or upon other lands, or how much money was spent by the Pacific Oil Lands

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Company upon San Benito lands. I did not know prior to going to San Francisco, what had been done with my certificate of stock in the Pacific Oil Lands Company, or how much the capital stock of such company had been issued or who got it. Yes, prior to signing this power of attorney we had been trying to negotiate a loan for the Empire Company to put down wells on lands which McMurtry though were extremely valuable and on which the company had options, and the company had sold stock through myself and others to different people around New York and in Canada, and there was talk between us to the effect that we felt in honor bound, or in the interest of decency, to pay back to the people who had purchased stock, the money they had paid for stock in that corporation by reason of our inability to finance the thing; they were demanding that and in general we were acceding to those demands, and in that way to satisfy them as soon as we could. That was what I meant when I, McMurtry and Hoeppepner talked about locating lands in California to try to make enough out of the enterprise and in some way to pay the people. Yes, sir, that is, we were going to make [393—287] money ourselves personally in that way and personally satisfy the stockholders. Yes, buy their stock and pay them the money that they had paid out. No, at the time McMurtry left New York, I had no assurance that he would ever locate any lands under those powers of attorney, nor were any specific lands mentioned when he got the powers of

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attorney or when he left here. No, I knew of no intent on the part of the other locators and McMurry and Hoepfner to buy back or pay these people their money that they had invested in the Empire Company.

Redirect Examination.

Q. Mr. Harder, you were called as a witness for the defendants, were you not, in the trial of the suit A-38, United States vs. Thirty-two Oil Company? A. Yes, sir. Q. Was not this question asked you by Mr. Lawler, at page 690 of the record: "Q. Was anything said to you at that time about his having received or about there having been paid or promised to have been paid any money on account of any contract made in regard to those lands? A. No, not having been paid. He told me that there was enough money realized or to be realized to enable him to come to New York to meet what he referred to as the indebtedness, and that what we referred to as the indebtedness was the money due to the old stockholders of the Empire Oil & Development Company and his debts in New York, such as hotel and boarding-house bills which had never been paid at that time. Was not that question asked you and did you not make that answer? A. Yes, sir. Q. At the same time and in the same examination, was not this question asked you, at page 698 of that same record: Q. Did he say anything in those conversations as to whether or not there had been any actual demonstrations or developments on [394—288] these particular lands that were covered by

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the new or later locations? A. I didn't understand from anything he said that the money he had was due to the production and flow of oil. Now, this money that he had was sufficient to pay off all the stockholders. That was something that I was insisting upon, that the first money that was received out here should be used to satisfy the clamoring and criticizing stockholders of the old Empire Oil & Development Company, and he told me at that time that he had satisfied all those, and that he had paid every dollar of every stockholder that had paid in any money for stock, with interest, and that he had also settled his hotel bills, and we were all clear of debt. He had gotten enough money from a lease or from a sale to satisfy all that. I think that entire indebtedness. And that sort of thing was completed on this 1911 visit. It was not all completed on the first one. Were you not asked that question, and did you not make that answer? A. Yes.

Q. In your cross-examination, Mr. Ach read a letter dated April 23d, 1914, from yourself to Mr. L. B. McMurtry, the letter being dated April 23d, 1914, in which you used the following language: "I have just had a call from Mr. J. McG. Williamson, Special Agent, U. S. General Land Office, Denver, Colo., and at his request have written him a letter, of which I enclose a copy, the contents of which speak for themselves." I now read from the record at page No. 736, the following, which was read by Mr. Lawler upon direct examination of the trial referred to.



(Deposition of Julius F. Harder.)

Mr. ACH.—Counsel for the defendants objects to counsel reading the letter referred to into the question, upon the ground that he is of the opinion that an objection to the offer of such a letter by the Government would be sustained on the ground that [395—289] it is not proper redirect examination, incompetent, irrelevant and immaterial, and that it is not proper or fair to insert the letter as read in the question. We insist on the objection.

The COURT.—The objection is overruled.

Mr. ACH.—Exception.

Mr. HALL.—That letter is as follows:

“April 23rd, 1914.

“Mr. J. McG. Williamson,

“Hotel McAlpin, City.

“Dear Sir:

“Pursuant to our conversation of this afternoon permit me to say in reply to your inquiries that I am personally acquainted with Messrs. L. B. McMurtry, E. A. Hoepfner and F. E. Harrison, all of San Francisco, I knew all of these gentlemen, and 12 or 15 others in addition, about 1906 and 1907 in New York City, in connection with the affairs of the Empire Oil & Development Company, of which I was then Vice President.

“This company went out of existence by reason of the business depression which culminated in the financial disasters of October and November of 1907. All three of the above-named gentlemen went to San Francisco for the purpose of safeguarding the assets of the company and McMurtry returned

(Deposition of Julius F. Harder.)

to New York a year or two later, paid all the debts in full and took up the outstanding stock of the defunct company to the satisfaction of all concerned, so far as my informatoin goes. I am not as deeply interested, nor so conversant with the affairs of these men and their enterprise as I was then, and I am not advised as to the specific enterprises in which they may now be engaged.

"I can speak in the highest terms, of their character and integrity. Messrs. McMurtry and Harrison I have known since [396—290] 1906. Hoepfner I have known intimately since 1891. I have never known or heard of anything derogatory either to their personal character and capacity or to their business enterprises or methods.

"I will be glad to give you any further information of which I may be possessed and trust that the above answers your inquiry.

"Yours truly,

"JULIUS HARDER."

Q. Is the copy of the letter which I have read a copy of the letter which you referred to in your letter to Mr. McMurtry as having written to Mr. Williamson? A. Yes. Q. At the time you testified in suit A-38, was not this question asked you: "Q. Were you also willing that Major Hoepfner should have an interest in these locations at the time you made out your power of attorney? A. Yes, sir." Q. Were you not asked that question, and did you not make that answer? A. Yes, sir. Q. Was not this question asked you? "Q. That

(Deposition of Julius F. Harder.)

was the understanding, was it not, at the time?

A. The understanding I had was that Mr. McMurtry and Major Hoeppner were to be locally on the ground and devote their energies to this business that we had on hand, and certainly sooner or later there would be an arrangement made as to what their relative interests would be." Q.

Were you not asked that question, and did you not make that answer? A. Yes, sir. Q. Then this question was asked you by myself: "Q. It is a fact, is it not, that at the time you executed this power of attorney and turned it over to Mr. McMurtry, you understood then that Mr. McMurtry and Major Hoeppner would have an interest in whatever locations of oil lands were made as a result of this power of attorney? A. Yes, sir."

Were you not asked that [397—291] question, and did you not make that answer? A. Yes, sir. Then you were asked this question: "Q. You had that same understanding, did you not, in 1910, when you gave this confirmation or ratification of the power of attorney for Mr. McMurtry in New York? A. Yes, sir." Was that question propounded to you and did you not make that answer? A. Yes, sir. Q.

Also was not this question asked you: "You had that same understanding, did you not, in 1911 when you received your Pacific Oil Lands stock? A. Yes, sir."

Was not that question propounded to you and did you not make that answer? A. Yes, sir.

Q. Also this question was asked you, was it not:

"Q. You had and have that understanding down

(Deposition of Julius F. Harder.)

to the present time, have you not? A. Yes, sir."

Q. If you had known in December, 1907, that Mr. McMurtry or any other person would, in the future, employ the power of attorney which you were about to and did execute for the purpose of acquiring title to more of the public domain than the General Land Laws of the United States permitted, would you have signed such an agreement? [398—292]

Recross-examination.

Q. Mr. Hall, when interrogating you from page 750, immediately preceding his last question, read you this: "Q. You had and have this understanding down to the present time, have you not?" Inquiring of you as to whether Mr. Hoeppner or Mr. McMurtry was to have any interest in the lands or locations of the property and you answered, "Yes, sir." He then stopped. Now, immediately following that answer is the following question: "Q. And you are still willing and still consent that Hoeppner and McMurtry may have an interest in all of those lands which were located under this power of attorney which you gave in December, 1907? A. Well, by 'interest,' I understand that you intend to convey the meaning of fair remuneration for their services rendered. Q. Participation, I mean, in the benefits to be derived from those locations. A. As represented in a fractional part of the returns coming from the business of the company." Did you so testify? A. Yes, sir. Q. And did you not understand all the time that you were answering that they were

(Deposition of Julius F. Harder.)

not to have an interest as he read to you, but that they were to have some reasonable remuneration, uncertain and unannounced, in any profits that might be returned from such lands? A. That idea underlay all my answers. Q. Now, Mr. Hall read to you from page 698, that you [399—293] had testified, and you admitted that you had, as follows: “A. I didn’t understand from anything he said that the money he had was due to the production and flow of oil. Now, this money that he had was sufficient to pay off all the stockholders. That was something that I was insisting upon, that the first money that was received out here should be used to satisfy the clamoring and criticizing stockholders of the old Empire Oil and Development Company.” Now, then, referring to the money that was received, didn’t you then mean the money received by Mr. McMurtry and Hoeppner, and not the money that was received by or due or owned by people that did not have anything to do with the Empire or the sale of its stock? A. Certainly. Q. You certainly did not intend that money realized from property belonging to a number of other people should be used for and on behalf of Mr. Hoeppner or Mr. McMurtry? A. Certainly. I think I made that plain in my previous answer. It was money we would receive personally as profits. [400—294]



**Deposition of Francis E. Pratt, for Plaintiff.**

FRANCIS E. PRATT, called April 21, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at 110 West 123d Street, New York City. Am an engineering salesman employed by the Lea-Courtney Company, engaged in selling pumps. Am a graduate of the New York University and special course in Lehigh University. In December, 1907, I resided in the City of Mexico. Was engaged in the same line of business, having gone there in June, 1907, and remained five years. No, I was not in New York City in December, 1907. My employment with the Hammond Iron Works in Mexico brought me in touch with the mining world and I was very thoroughly familiar with the mining industry in Mexico, but not in the Western States of the United States, nor do I know anything about the oil industry at all. Have a general familiarity with the laws of Mexico with respect to the acquisition of Government mineral lands, but have no familiarity with the United States laws concerning the acquisition of public mineral lands.

Q. The records of Kern County, California, disclose that on December 19th, 1907, Francis E. Pratt, and a number of other persons appeared before George F. Handel, a Commissioner of Deeds of the City of New York, State of New York, and acknowledged the execution of a power of attorney.

(The substance of Plaintiff's Exhibit 6 stated.)

(Deposition of Francis E. Pratt.)

Are you the Francis E. Pratt who executed that document? A. I think I am; yes. Q. Did you appear before any official at that place, and acknowledge the execution of that document? A. I did. Q. When was that? A. Without— I could not tell you the date. Q. I want to be perfectly fair to you and I now exhibit a paper to you which I have had marked Government's Exhibit No. 27 for identification. Do you remember of having [401—295] executed more than one writing in the City of Mexico, or one instrument? A. I don't think so.

I remember having acknowledged the original of which this Exhibit No. 27 is a photographic copy, before Arnold Shanklin, Counsel General of the United States at the City of Mexico, August 29, 1910. That paper bears a reproduction of my signature. Yes, prior to acknowledging the paper of which Exhibit 27 is a photographic copy, I had executed other papers with respect to these McMurtry oil transactions. This was done in New York. I don't remember the date.

(Witness reads power of attorney, Plaintiff's Exhibit 6, being a certified copy of the original.)

My recollection is that I signed a paper of that kind.

Q. The paper itself, namely, the power of attorney, discloses that you appeared before George F. Handel or rather recites that you appeared before George F. Handel, in the county of New York, State of New York, on December 19th, 1907. Were you

(Deposition of Francis E. Pratt.)

in New York City, New York, or the county of New York, New York, on December 19th, 1907? A. No. Q. Where were you? A. In December, 1907? Q. December 19th, 1907? A. No; I was in the City of Mexico. Q. How long before December 19th, 1907, was it that you had been in the City of New York? A. In June, 1907. Q. How long after the 19th of December, 1907, was it that you were again in the City of New York? A. April, 1913, I think—no, 1912. Q. Was the question of the execution of this power of attorney taken up with you by anybody personally in the City of Mexico, or by letter to you in the City of Mexico? A. By letter, I believe.

I think Jack Thickers wrote me concerning that. I have not the letter and don't know what became of it. Suppose I [402—296] destroyed it when I left Mexico.

Q. Can you tell us what Mr. Thickers said when he asked you to sign this power of attorney, or whatever it was he sent to you while you were in the City of Mexico? A. No, I have no recollection. Q. Was this letter which was written to you by Mr. Thickers to the City of Mexico before or after the time you executed Exhibit 27 before Arnold Shanklin? A. About that time, I think. Have no recollection of receiving a communication from Thickers in December, 1907, in regard to these oil matters. Cannot give any explanation whatever as to why this certified copy of the power of attorney recites that I appeared before the notary in New York County, New York, on December 19, 1907. The first that my

(Deposition of Francis E. Pratt.)

attention was called to this oil land matter was when Jack Thickens explained the desires of Mr. McMurtry in the matter and asked me if I would sign this power of attorney.

Q. What desires of Mr. McMurtry did he explain to you? A. He desired to obtain some of these lands for himself and others.

That was shortly before I acknowledged that power before Arnold Shanklin in the City of Mexico. The letter, I mean, that he wrote; that is, the letter that he wrote in regard to this paper that I acknowledged before Shanklin. Received that letter very shortly before I acknowledged the paper before Shanklin.

Q. Was that the first time you had received any advice about these McMurtry oil land transactions.

A. No. Q. When was the first time you received any advices about it? A. I cannot tell you the date, but some time before I left New York. In June, 1907.

It is hard to say just what I knew about those transactions at that time but I knew just what McMurtry wanted to do, and [403—297] why he wanted me to sign the power of attorney. He advised me through Mr. Thickens and him. Without having taken down what Thickens told me I don't know exactly what to say. He told me what the idea was, that I will be one of the locators, you might say, of these lands. I received \$250 in the form of a draft I think, when I signed this power before Counsel General Shanklin. It was a check.

(Deposition of Francis E. Pratt.)

Q. I now invite your attention to a check, in substance, as follows:

“No. 135. December 28th, 1910. Second National Bank of the City of New York. Payable to the order of Francis E. Pratt, for \$250. (Signed) F. H. Searls.”

On the back thereof appears the following in typewriting:

“Received from L. B. McMurtry, \$250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

Now, that is signed, “Francis E. Pratt.” Is that your signature to that (showing witness)? A. Yes, sir.

That is the check that I received in the City of Mexico in 1910. Don’t remember as to any letter accompanying it. Yes, the typewriting read was on there before I signed. I read it. Don’t remember whether I received a letter other than one just saying “enclosed herewith check.”

Q. Did you know or did you have any information as to why the check was sent to you? A. Yes, Mrs. Thickens and my wife were intimate friends and frequently things were touched upon as in this case. This case was explained by Mrs. Thickens and my recollection is that Mr. Thickens also went into the [404—298] matter, and sent this check in what you



(Deposition of Francis E. Pratt.)

might say following up that explanation. I don't know exactly how to put it, except that it was for the purpose of concentrating control of the company with Mr. McMurtry, that Mr. McMurtry was to get it in one hand. That was the Empire Oil & Development Company, I think it was. No, at that time I had never heard of the Pacific Oil Lands Company, nor did I know how many locations of public lands had been made in California by McMurtry acting under the power of attorney of December 19, 1907, to which my name appeared as a locator, nor the extent of lands so located. No, I made no inquiry of anyone as to that or as to the state of development of these lands at that time. I think I knew in a general way that the lands were in Kern, or one of those counties in California. I presume I knew this when I signed the check. I hardly think I heard any more of this until I came back to New York City in April, 1912, then talked with Jack Thickers. Cannot remember what was said. The general idea was that these lands were located and that eventually those who had gone in with Mr. McMurtry would receive their due proportion. Don't remember that Thickers told me the number of locations that had been made or the area of the land covered. No, I did not then know what my interests in these lands was nor did I inquire of Thickers. Never made any inquiries of Thickers or anyone else by letter before I returned to New York. Don't remember finding any papers with respect to this matter after I returned to New York.

(Deposition of Francis E. Pratt.)

Q. Well, I invite your attention to Certificate No. 34, which we find in the original stock book of the Pacific Oil Lands Company, and attached thereto is a receipt which reads, "Received certificate No. 34 for 1000 shares of Pacific Oil Land Company. Dated September 27, 1911. Francis E. Pratt." Q. Are you sure [405—299] about the date when you returned to New York? A. I am not sure, but I think it was about the 22d or the 23d of April, 1912. Q. How was this certificate No. 34 of the Pacific Oil Lands Company delivered to you? A. By mail. My recollection is that I received the stock from Thickens. Yes, a letter accompanied it. I suppose I destroyed the letter. Don't remember what it said. I became a stockholder in the Pacific Oil Lands Company probably because of my interest in the work that McMurtry had done. Think I sent the receipt for this stock back to Thickens. Don't recall having executed any other papers after receiving this stock or after returning to New York.

(Plaintiff's Exhibit 27 read into deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Francis E. Pratt, August 29, 1910 at Mexico City.)

(Plaintiff's Exhibit 28 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by F. E. Pratt, August 13, 1913 at New York City.)

Yes, Exhibit No. 28 bears my signature, and I re-

(Deposition of Francis E. Pratt.)

member distinctly executing it. Presume it came to me through Thickens. Have no distinct recollection as to the circumstances concerning its execution. My recollection is that I was about to go to South America, and it was considered best to, for Mr. McMurry to have my proxy at those meetings. [406—300]

Yes, I went to South America. Went November 29, 1913, and remained about two years. Yes, I executed the papers in connection with this transaction while there. Yes, I executed that paper (Plaintiff's Exhibit 29) at Rio de Janeiro. Received it through the mails from Thickens. Don't remember that a letter accompanied it. Have no such letter. Don't remember why it was sent. Returned it to Thickens.

(Plaintiff's Exhibit 29 read into deposition. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Francis E. Pratt, December 28, 1913.) [407—301]

Yes, I received money in connection with these oil land matters while in Rio de Janeiro. My recollection is that it was \$250. Don't remember when this was. Yes, remember receiving a draft for \$20 shortly after I executed this consent on December 28, 1913. This \$20 was transmitted to me by Thickens in the form of a check or draft.

Q. I invite your attention now to a check which is in substance as follows:

“San Francisco, 1/28/14/ No. 1234. The Bank of California, National Association, San

(Deposition of Francis E. Pratt.)

Francisco. Pay to the order of Cash, \$20.00.

Pacific Oil Lands Co., by F. E. Harrison, Secy.-  
Treas. L. B. McMurtry, Vice-Pres.”

On the back thereof, I find, in pencil, the following endorsement: “Dft. Francis E. Pratt.” Is that your signature on there (showing witness)? A. No. Q. Did that check ever come into your possession? A. I don’t remember. Yes, I think I remember receiving a payment of \$20 in connection with these matters from Thickens about that time. It was sent me as dividend of the Pacific Oil Lands Company. [408—302] I kept my certificate of stock No. 34 in this company a year and a half or two years then I transferred it to Mr. McMurtry, I think. That is my signature to the transfer on said certificate. Don’t remember where I was when I signed or whether or not the name of Walter S. Brann was typewritten in on the back of the certificate at the time I signed it, or the name of the witness Robert B. Staunton, Jr. I must have signed that while in Rio de Janeiro. Thickens requested this by cable. This was simply a request to return the stock signed. I signed it and sent it to Thickens. Think I received \$250 by draft for so doing. The explanation for wanting this assigned was to concentrate control of the stock for purposes of business in McMurtry. Received this information from Thickens. No, I did not then know how many locations had been made under this power of attorney or the extent or area of land covered by such locations or the value or

(Deposition of Francis E. Pratt.)

state of development of such lands, or who was in possession of the lands. No, I made no inquiries on these subjects nor did I receive any advice or information thereon. No, I did not at that time know about any contracts between McMurtry and Herrin and others that were dated August 4, 1910, August 6, 1910, or contracts dated some time in the year 1913, nor did I know what the resources or assets of the Pacific Oil Lands Company were. The next I heard of these transactions, I think, was after I returned to New York, which was in October, 1915. My recollection is that Thickens then told me things were going all right and eventually we would hear of some money coming out of the transactions that had been made. No, have never received any money since then or anything else of value. No, at the time of transferring this stock represented by certificate No. 34, I did not know who the stockholders in the Pacific Oil Lands Company were. That was the [409—303] only stock I ever owned in that company. Never discussed this matter with anyone but Thickens. Don't think I knew Harry B. Thorn in the City of Mexico; nor do I remember of seeing him there. He was not associated with me in business. He was not in Rio de Janeiro that I know of.

Cross-examination.

Yes, I think I have always read everything I signed. No, I did not know J. C. Thickens, the father of Jack, Mark W. Hatch, Hamlin E. Hatch,



(Deposition of Francis E. Pratt.)

T. R. Bailey, Walter Wilson, J. E. Farrell, or George F. Handel. Before going to Mexico City my office was at 45 Broadway, New York. Had then known Jack Thickers several years. He came to my office at times and I think I have seen him at the office of the Empire Oil & Development Company, Barclay Building, 299 Broadway.

(Certified copy of power of attorney, Plaintiff's Exhibit 6, handed witness to read.)

Q. Do you now recall reading a paper of similar import before putting your name to it somewhere in the world? Please answer. A. No. Q. You stated to Mr. Hall in answer to his question which was to the effect that the records of Kern County, California, showed the recordation of the power of attorney by which you authorized Mr. McMurtry to locate and develop, etc., mineral lands for you and in your name and you stated that you were the Francis E. Pratt referred to in that power of attorney; do you remember making that answer? A. Yes, sir. Q. Was that true? A. To the best of my recollection. Q. And then when he did ask you the question you had a recollection of signing the power of attorney to Mr. McMurtry, authorizing him for you and others to locate mineral lands; is that true? A. Yes, sir. [410—304] Is not this the one? Q. Yes, that is what I contend. Now, I ask you whether the reading of that power of attorney causes you to remember the fact that before the signing of the power of attorney that you did sign, that it was a paper of the same import,

(Deposition of Francis E. Pratt.)

the same meaning, as the certified copy which I have now asked you to read (showing witness)?

A. Yes. Q. And if you answered to the contrary a moment ago to my questions, you misunderstood me, did you? A. Yes, sir. Q. Have you in your

lifetime ever given anybody else a power of attorney to locate mineral lands for you and in your name? A. No, sir. Q. Have you a distinct and

positive recollection in your mind that at some time, somewhere in the world, you did give Mr. Mc-

Murtry power of attorney, with other people, to locate mineral lands for you? A. Yes, sir. Q.

Now, if you can, kindly tell us where you signed the paper which you think was a power of attorney to Mr. McMurtry to locate mineral lands? A. It

was New York. Q. Now, is there no means at your hand by which you can ascertain positively

and definite the exact date when you went to Mexico? A. It was about June 15th, 1907, that I

took the boat to New Orleans. Yes, I once lived at New Rochelle, New York. Yes, I have met Jack

Thickens on the train coming from New Rochelle, to New York City, and the question as to that does

not refresh my memory.

Q. Don't you see, Mr. Pratt—and I state this thing to you because I want to be fair with you, and because I know Mr. Hall wants to be fair with you, and we are simply desirous of getting at the fact—

Mr. HALL.—Yes. I want to say now that I left this witness in this shape, that is, on the record,

(Deposition of Francis E. Pratt.)

because it was a surprise [411—305] to me, and I didn't know anything about it. I don't want the criticism made about leading questions; and I ask counsel now to have the opportunity of cross-examining to try and get some explanation of the apparent discrepancy.

Q. Don't you see, Mr. Pratt, this power of attorney is dated the 19th of December, 1907, and you say you signed it in New York City, and in December, 1907, according to your statement, you were in Mexico, and did not return until some time in 1912, and according to the advice of Mr. Hall and myself—and I only state this to give you an opportunity to state the manner, so far as developed by this record—prior to June or July, 1907, the matter of executing powers of attorney and locating these lands had not been broached by anybody here, and either you did not sign this power of attorney at all and your signature is a forgery, or it must have been sent to you in Mexico. Do you get the idea? A. Yes, sir. Q. Now, kindly think about the matter a little bit, so that we can straighten the thing out and so that we will know what the real facts are in the matter, and in doing so kindly remember that you also acknowledge that you signed this ratification of the power of attorney which you read before signing, and in which you ratified the power of attorney which you gave in December, 1907, which was recorded, and under which contracts were made for you, according to the paper. Now, try and remember and help us

(Deposition of Francis E. Pratt.)

out in this matter, and tell us if it is a forgery, or account for the error or mistake in some sort of way? A. It certainly is no forgery. Q. You say that because you definitely remember signing the power of attorney? A. Yes, sir. Q. Now, account for the discrepancy in the dates, if you can? A. I don't think I can. Q. Is it possible you went away in 1908? A. I don't think so. [412—306] Q. Will you kindly look it up and see if that is not so? A. My recollection is very clear that it was the year of the panic, in 1907, that I lost my position with the Almy Motor Tube Boiler Company, in February, and that in June I decided to go to Mexico, and I took the steamer to New Orleans and then to the City of Chihuahua.

Took the steamer "Creole" at New York, went to New Orleans, thence to El Paso. Never was a stockholder in the Empire Oil & Development Company that I know of. Jack Thickens first spoke to me about these oil land locations in New York before I went to Mexico. I don't think I know C. W. Thorn. Jack Thickens never asked me to buy any stock in the Empire Oil & Development Company, nor did anybody else. No, Jack Thickens, at the time he spoke to me about these oil lands in California, did not undertake to tell me what the law was as to persons having a right to locate in groups of eight persons. Yes, my recollection is that when he asked me for this power of attorney he told me that McMurtry was going to California and was going to, if he could, locate

(Deposition of Francis E. Pratt.)

oil lands for those who gave him powers of attorney. That is my recollection. Yes, I knew when I signed that ratification that I was ratifying the power of attorney which I had theretofore given and the contract made under that power of attorney. Yes, my wife was acquainted with Mrs. Jack Thickens. The families had social relations and my wife frequently called at the house of Thickens and they were frequently at our house in New Rochelle. No, I was not surprised to see this ratification for acknowledgment. I think before receiving this check for \$250 while in Mexico, I had met F. H. Searls. Had [413—307] no business relations with him. Had just casually met him and knew that he was connected in some way with McMurtry. Yes, I will make investigations for the purpose of determining when I actually left New York City for Mexico. No, when I executed that power of attorney and signed that ratification, I had no intention of defrauding the Government or of permitting the use of my name to permit any person to obtain more mineral land than they were entitled to. Yes, when I signed that power of attorney I had in my mind the actual intention that McMurtry should for me and in my interest locate oil lands in California, if he thought advisable. No, I don't remember that Thickens or anyone else told me that McMurtry or Thickens was to have any ownership or interest in such locations or that I was not to have the ownership of any lands that were located in my name by McMurtry.



(Deposition of Francis E. Pratt.)

Yes, I believe I remember that when I received that check dated December 28, 1910, Thickens wrote that it was a dividend check coming out of the avails of the contracts which I had ratified and asked me to endorse the receipt on the back so that the affairs of the locators could be handled to good advantage through some company that McMurtry was going to organize, or words to that effect. I think I remember that is a fact but I will not swear to it. No, I don't think I understood that by putting my name on the back of that check I was giving up all my interest in the lands that had been located by McMurtry in my name. Yes, I kept the money realized from that check. Yes, some of my information came from correspondence between my wife and Mrs. Thickens in a general way. This receipt attached to the stub of the stock certificate No. 34 bears my signature and when I signed it. Yes, my recollection [414—308] is that I was advised that a company had been formed by the locators of the lands and that the land had been transferred to the corporation, and that the certificate represented my interest as a locator. No, there was no other reason given me for sending me this stock. I had not purchased any stock of the Pacific Oil Lands Company. No, I do not know Major Hoepfner or F. E. Harrison. Never knew how much stock Hoepfner acquired in the Pacific Oil Lands Company or how much McMurtry acquired. Don't remember that I was informed how many locators received stock. Yes, I knew when

(Deposition of Francis E. Pratt.)

I signed the ratification that these contracts and conveyances were mentioned therein, but I think I have explained that I didn't know personally that any contracts had been made. Yes, I think I can say that at the time I received the stock and at the time of selling it, I understood that all the lands that were located in my name and in the names of the other locators had been acquired by the Pacific Oil Lands Company, including the contracts which I ratified, and that my shares of stock represented my interest in those resources.

Mr. HALL.—I don't want to interrupt you, Mr. Ach, but the fact is that all the lands which had been located by the use of this gentleman's name, had not been transferred to the Pacific Oil Lands Company. The only things which had been transferred to this Pacific Oil Lands Company were the contracts which were made with Herrin and others, and the Associated Oil Company.

Mr. ACH.—I know, but they transferred the lands, because if the Associated Oil Company and these people did not carry out the contract, the rights of the locators who had executed the contracts, went to the company. [415—309]

Mr. HALL.—I don't quibble about that, but the fact that there were many other locations upon which his name had been used were not affected at all by this contract.

Q. Did you know that certain lands in San Benito County had also been transferred to this company? A. No. Q. They did not advise you of

(Deposition of Francis E. Pratt.)

that? A. No. Q. Do you know how you got the \$20 dividend that was sent to you; you said it was either a check or draft; do you know whether it was paid to you in cash by anybody, or whether you received a letter in connection with it? A. I don't remember it distinctly.

(Plaintiff's Exhibit 29 handed witness.)

Yes, I read that before signing it and presume that I understood that the \$20,000 had been realized as surplus at that time by the Pacific Oil Lands Company, and that they wanted my consent as one of the locators and stockholders to an early distribution thereof.

Q. Is it not a fact that you received a draft from Mr. Thickens for that money while you were in Rio, and in connection with that question I show you a report bearing the initials of "N. A." and "F. H." in the left-hand upper corner, and dated in pencil "Jan. 1914," entitled, "Pacific Oil Lands Company, First Report to Stockholders." Look at it carefully and read it, if you want to, and tell me whether you received a copy of that report at the time you received the \$20 from Jack Thickens?

Mr. HALL.—I want the record to show that I did not intentionally overlook that matter, and that that is the report I referred to before.

Mr. ACH.—Yes, sir.

Mr. HALL.—It simply slipped my memory at the time, that is all. [416—310]

A. I think I received a copy of that report.

Q. And you read it when you received it, did you

(Deposition of Francis E. Pratt.)

not? A. Yes, sir. Q. Now, subsequent to receiving that report and that dividend, you endorsed certificate No. 34 and sent it to Mr. Thickens in New York? A. Yes, sir. Q. You therefore had the certificate of stock with you in Rio? A. Yes, sir. When I returned to New York from Rio de Janeiro in 1913, Thickens talked to me in a general way about what was being done by the Pacific Oil Lands Company. Don't recall that he mentioned possible trouble with the Government concerning these locations or the depreciation in the price of oil, or anything of that kind. No, I didn't ask Jack Thickens anything about the value of this stock when I came back from Mexico and before going to South America, nor did he say anything to me about the possibilities of making money out of that stock or the locations at that time. What he told us, however, was encouraging: "That some time all the locators would make some money." Was in this country traveling out of New York, about a year and a half after returning from Mexico before going to Rio de Janeiro, but did not have many interviews with Thickens or anybody else concerning these oil land matters. My recollection is that when Thickens cabled me at Rio to send him this stock, that it was simply a request to send it on, I had sufficient confidence in him to do so. Yes, subsequent to this I received a letter from him enclosing a draft or check for \$250. No, he did not say what he had done with the stock. Yes, he said, according to my recollection, that other

(Deposition of Francis E. Pratt.)

moneys would be coming to me and that this was simply for the purpose of properly manipulating the business of the corporation. Yes, sir, [417—311] that is my present recollection. Yes, since my return from Rio in August, 1915, I have talked this matter over in a general sort of way with Thickens, but never asked him what he got out of it. Don't remember that he told me that there was still money coming to me out of my interest in these lands, but my idea was that there was still money coming. Yes, I still have that idea. Don't remember that I ever executed any instrument modifying or setting aside the power of attorney to McMurtry authorizing him to locate lands for me. Yes, it is a fact that Thickens told me that if McMurtry located lands out there for me and for the other locators that he would endeavor to cause some person some persons for an interest in the product, or the land, to develop it without expense to the locators, if possible, and I understood in a general way, that under the law, assessment work was to be done after discovery of placer mining claims. I don't know that Thickens said in so many words that McMurtry would find somebody to finance all of the expenditures for the locators, but that is the impression that I got. Yes, I understood that I was giving McMurtry full rights to make contracts concerning the locations and to develop them and obtain means to do so. Yes, even to mortgage the lands.



(Deposition of Francis E. Pratt.)

Redirect Examination.

No, I never was asked to advance any money to be used in the development of oil upon any of these lands or for the purpose of protecting or holding these lands.

Q. If you had known at the time you were asked to sign the power of attorney that you afterwards did sign that it would become an instrument in the hands of any person to [418—312] acquire lawfully, would you have signed such a power of attorney? A. No, I don't think I would.

Cross-examination (Continued).

Q. Have you made a search or research among your papers in any way to ascertain the year and time that you left New York to go to Mexico for the first time? A. I went to the Southern Pacific Railroad Company, which runs the Morgan Line, and they told me that the date the "Creole" left was June 17th, 1908, and my name was on that passenger list. Q. And you left in 1908, and not in 1907; is that right? A. Yes, sir. Q. I want to ask you one question; since you have been put upon the stand Mr. Harry B. Thorn has been upon the stand in this matter, and he testified—and I simply state these facts to you because both sides want to refresh your memory, if it is to be refreshed, or to determine the circumstances attending the transaction—

Mr. HALL.—I agree with that statement.

Q. That he got a letter from either Searls or his father—

(Deposition of Francis E. Pratt.)

Mr. HALL.—From his father.

Q. Sending down to him the ratification to be signed by himself and yourself; that you were out in the interior at some mines, but that Mrs. Pratt was living in the City of Mexico, and that he took the letter and ratification which you acknowledged before the Consul-General, and left it with Mrs. Pratt? A. Yes, sir. Q. For her to send to you and for you to send it north, or to send it to San Francisco, wherever the occasion was; and also he testified that subsequently, in 1910, after the ratification, I think in December, 1910, that he met you personally in the City of Mexico and personally turned over to you the letter which he [419—313] received from either his father or Searls, with a check for \$250, to you; that he came north and got married and went back to Mexico with his wife, and while there, called upon you and your wife at your house. Now, do these statements of fact testified to by Mr. Thorn, refresh your memory in any way? A. They do, yes. I had forgotten entirely that Mr. Thorn was in the City of Mexico and called on me, because I had never known Mr. Thorn, and it was only a casual call. A. That is right. A. Now, I do remember. Q. Do you remember that you did meet? A. Yes, sir, that I did meet him in Mexico. Q. And so you were mistaken then the other day when you said you had not seen him or met? A. Yes, sir, but I did not remember, I did not remember, that he turned the check over to me at that time; I don't know; I

(Deposition of Francis E. Pratt.)

won't testify that he did not. Q. You won't?

A. No. His memory is better than mine in regard to that. Q. How about the ratification; do

you remember now that I have made the suggestion as to what he testified to, that Mrs. Pratt held it for you, or sent it to you, wherever you were?

A. My recollection is rather vague on that, but I remember I was in Guanajato for a considerable time about that time, and whether she held it until I came back, or sent it to me at Guanajato, for me to return to San Francisco, I don't remember.

Redirect Examination (Continued).

No, I still have no recollection of the actual execution of this original power of attorney. Thickens presented it to me, but I don't remember what was said at the time. My recollection is rather hazy as to that time. [420—314]

**Deposition of Harry B. Thorn, for Plaintiff.**

HARRY B. THORN, called April 21, 1917, on behalf of plaintiff, testified by deposition as follows:

I reside at Bellaire Gardens, Queens, Long Island. An a structural engineer employed by the Chili Exploration Company, at No. 120 Broadway. In December, 1907, was living at my father's home in Yonkers, and was a structural draftsman employed by the Thompson-Starrett Company at 49 Wall Street. Am thirty-four years of age.

Q. The records of Kern County, California, disclose that on December 21, 1907, Harry B. Thorn

(Deposition of Harry B. Thorn.)

and others executed before Samuel C. Worthen, a notary public in New York County, State of New York, a power of attorney. (Substance of Plaintiff's Exhibit 5 stated.) Are you the Harry B. Thorn who executed that instrument? A. I am.

Mr. McMurtry was a friend of my father. C. W. Thorn and my father came to me and told me that it was a chance to make good on some supposed oil lands out in California, and wanted to know if I wanted to go in on the speculation and give McMurtry my power of attorney. I had no business relations with McMurtry. No, I was not interested in the Empire Company. Don't think any time elapsed between the time my father spoke to me about this and the execution of the power of attorney because I was only too glad of a chance to take it up. Yes, I read over the power before signing it. Yes, I frequently had conversations with my father about the matter after signing. The next paper I signed in this connection was about three years later. During that time I had made occasional inquiry of my father as to how the proposition was coming along. Cannot [421—315] remember what information father gave me prior to January 1, 1909, except in 1909 some time, I think it was in 1909, some time, in speaking of the developments down there—not with respect to my signing of the power of attorney, but in talking over the the development he told me that Mr. McMurtry on behalf of the locators had gotten some people, I believe he called them the

(Deposition of Harry B. Thorn.)

“McLeod crowd,” to take over a certain portion of the property to drill some wells. He said that it was costing so much to keep up the assessment work, that it was found necessary to get the McLeod crown to come in and help get the patents to the extent of driving the wells. Cannot say what time in 1901 this was. The next paper I signed was in 1910. I was in Mexico at the time, and my father wrote me enclosing a paper to sign, as a ratification of this power of attorney, both for me and Mr. Pratt, who was down there at the time, and that I sign it and get the American Consul to witness my signature. Pratt’s paper was sent to me, because father knew he was in Mexico, and didn’t know just where he was, because he was out at the mines. I did not know Pratt and did not see him at that time. Went to the address and found his wife and left the ratification with him. Saw him later. (Plaintiff’s Exhibit 30 shown witness.) Yes, I believe that is a copy of my ratification. That seems to be a photographic copy of my signature. Think I sent the ratification direct to California. These ratifications came through the mail with a letter. Don’t know what has become of the letter. Have looked, but cannot find it. He explained to me the development of affairs, saying there was still trouble in getting money enough to go ahead with the assessment work, and it seemed best to sell certain holdings to the Associated [422—316] Oil Company, and the Associated Oil Company before they signed any agreement, while



(Deposition of Harry B. Thorn.)

they were satisfied with the records, they wanted to verify our power of attorney to see that we were real locators, and still had Mr. McMurtry as our agent there.

Q. At that time, did you have any information in regard to the lands that were being affected by the contract between Mr. McMurtry and Mr. Herrin, of date August 4th, 1910? A. Naturally I was not familiar with the geography there, and I cannot say that I can tell by the lot numbers or anyway, anything definite, what the lands were, or where they were. Q. Did you know how many quarter sections of land were affected by that contract? A. By that contract, about 1,440 acres, as I remember it. Q. When did you learn that fact? A. Through my previous conversations with my father in finding out what Mr. McMurtry was doing down there.

I believe that was part of the letter father wrote me. I knew there were several tracts, a total of 2,080 acres, I believe. I found that out from time to time. It was cumulative information, I guess, obtained from my father before I went to Mexico. Yes, I believe there were other lands besides this 280 acres upon which my name appeared as a locator. I believe there were 640 acres in San Benito County. I don't recall any other now.

Q. Was it your advice and information at that time that your name appeared as a locator upon all the 2,080 acres, and these 640 acres in San Benito County? A. No, the only section—only certain parcels. I believe my name appeared on a quarter

(Deposition of Harry B. Thorn.)

section, of each quarter section located. Q. When was it you first learned that your name had been used on a quarter section of each section that had been located? A. That I cannot say. Q. Well, [423—317] was it before you signed the ratification or afterwards? A. As I said before, my knowledge of the development down there was cumulative through conversations with my father. I cannot put any date on one piece of knowledge that I gained.

This knowledge was memoranda up to the time I finally released my stock in 1914. I received \$250 in about December, after I executed the ratification in August, 1910, I believe it was.

Q. I invite your attention now, Mr. Thorn, to a check in substance as follows: No. 134, New York, December 28, 1910. Second National Bank of the City of New York. Pay to the order of Harry B. Thorn, Two hundred and fifty dollars. (\$250.) F. H. Searls." On the back thereof I find the following in typewriting: "Received from L. B. McMurtry, \$250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907." And just below that is the signature of "Harry B. Thorn." Is that your signature (showing witness)? A. Yes, sir. Yes, that is the check referred to. This typewriting was on the back when I signed it and I

(Deposition of Harry B. Thorn.)

read it. This check came to me by mail in the same letter that Mr. Pratt's came. Think father sent it. I have not the letter. The substance of it was: There was explained to me further at that time that the land had been sold to the Associated Oil Company, and the terms of the sale were something over two million dollars, \$2,200,000, I think, to be paid at the rate of twenty cents per barrel out of production, if there was production; if not, then the lands could be reverted to the original locators. [424—318] Don't remember what information was given as to why the check for \$250 was sent me. I don't remember anything having been said definitely, except that naturally we were to profit by and money accruing from our development there. Yes, development of these lands that had been located in my name. Don't remember of any particular statement as to the sources of this \$250. I naturally assumed it was from the sale of the lands to the Associated Oil Company. Probably it did state in the letter, but I cannot remember now just what that letter was. I telephoned Pratt and he came down and got his check. I showed him the letter, and said it was self-explanatory. There was no talk between us. We were not then acquainted. I was in Mexico from 1909 until June, 1911. Heard no more of this matter while there. Shortly after returning to New York I received 1,000 shares of stock in the Pacific Oil Lands Company. That certificate No. 31 of the Pacific Oil Lands Company looks very much like the certificate which I had. It

(Deposition of Harry B. Thorn.)

was delivered to me by my father personally. That is my signature on the receipt of the stub of certificate No. 31 dated September 15, 1911. I signed that receipt on September 15, 1911, which was the time I received the certificate from my father. He told me that it seemed best, in order to handle the situation, to form a company of the locators and to issue stock and that was considered to be my share, and I was asked if that was satisfactory, and I said it was. No, I don't think I knew that at that time the resources or assets of the company, except the original terms of the sale, and the money coming in from the sale of each barrel of oil; that was as far as I knew; just what the amount was, I did not know. Yes, I must have been advised at that time that the contracts with Herrin and others or with the Associated Oil Company, [425—319] had been assigned to the Pacific Oil Lands Company. I cannot recall whether I knew at that time how many shares of this stock had been issued to McMurtry or A. E. Hoeppe. I think my father went over that with me in order to get my answers as to whether I was satisfied with my shares, and I remember in a general way what it was, but I cannot remember now what the actual number of shares was to any one person. The next I recall. I believe there was a meeting called in 1913 of the stockholders, and I was sent a proxy to sign over.

Yes, that is the proxy referred to. (Plaintiff's Exhibit 32.) Cannot recall whether father gave that to me personally or whether I received it

(Deposition of Harry B. Thorn.)

through the mail. I executed it and sent it to McMurtry. The only conversation between my father and myself at that time that I recall is that there was to be a meeting of the stockholders; I cannot remember any special business that was to come up. Cannot recall receiving any additional advice at that time as to the condition of the company and the lands that it was holding.

(Plaintiff's Exhibit 30 read into deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Harry B. Thorn, August 20th, 1910 in Mexico City.)

(Plaintiff's Exhibit 31 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by Harry B. Thorn, August 12, 1913, in New York City.) [426—320]

The next transaction I recall is that shortly after the meeting, which I believe was deferred, I received a letter asking me to either confirm the action of the meeting, or vote on the distribution of certain proceeds. Yes, I think I have that letter. (The same produced and offered in evidence as Plaintiff's Exhibit 32, with the deposition, is as follows:)

**Plaintiff's Exhibit No. 32.**

“December 3, 1913.

“PACIFIC OIL LANDS CO.

“Dear Sir:—

“You are the holder of 1000 shares of the capital



(Deposition of Harry B. Thorn.)

stock of the Pacific Oil Lands Company. The corporation has \$20,000.00 in cash assets which it wishes to divide among its stockholders, but under the laws of the State of California the Board of Directors cannot do so without the consent of all of the stockholders of the corporation.

“We herewith enclose you a written consent to be signed by you immediately and returned to us. The majority of the stockholders have already given their assent to this proposition, and when all of the stockholders have consented, the dividend will be declared and your proportion thereof will be at once forwarded to you. There will be other amounts from time to time that can similarly be divided without injuring the business of the corporation.

“Please attend to this matter promptly.

“Very respectfully yours,

“PACIFIC OIL LANDS COMPANY,

“By F. E. HARRISON, Secretary.”

Yes, Plaintiff's Exhibit 33 is the consent referred to in said Exhibit 32. (Plaintiff's Exhibit 33 offered and read into the evidence with the deposition is as follows:) [427—321]

(This is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Harry B. Thorn, December 9, 1913.)

No, at the time I signed Exhibit 33 I did not receive any advice as to the condition of the affairs of the company, except that they had \$20,000 to distribute. I afterwards received a check for \$20,

(Deposition of Harry B. Thorn.)

which, I understood, was my proportion of the \$20,000.

Q. I now invite your attention to a check as follows: "San Francisco, Cal., 1/8/1914/ No. 1194. Bank of California, National Association, San Francisco. Pay to the order of Harry B. Thorn, Twenty dollars. Pacific Oil Lands Co., F. E. Harrison, Secy. & Treas. L. B. McMurtry, Vice-Pres." And that is endorsed on the back, "Harry B. Thorn." Is that the check you have referred to (showing witness)? A. Yes, sir. Yes, there was a letter of transmittal with that check, which I hand to you. Said letter is marked Plaintiff's Exhibit 34, and offered and read in evidence with the deposition, and is as follows:) [428—322]

**Plaintiff's Exhibit No. 34.**

"January 8, 1914.

"PACIFIC OIL LANDS CO.

"Dear Sir:

"Inclosed you will please find dividend check for \$20.00, the same representing your *pro rata* of the first distribution to the stockholders of the company of cash assets amounting to \$20,000, and to which distribution we hold your written consent.

"Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.

(Deposition of Harry B. Thorn.)

“Wishing you a very happy and prosperous 1914,  
we beg to remain,

“Very truly yours,

“PACIFIC OIL LANDS COMPANY,

“By F. E. HARRISON,

“Secretary.”

Yes, there was a statement of the condition of the company accompanying that letter, which I produce. (The same marked Plaintiff's Exhibit 35 and made a part of this deposition is a copy of the statement which has been heretofore referred to as Pacific Oil Land Company's First Report to the stockholders, marked in the upper left-hand corner “F. H.” and “H. A.,” and in the upper right-hand corner in pencil “Jan. 1914,” is as follows):

**Plaintiff's Exhibit No. 35.**

**PACIFIC OIL LANDS COMPANY FIRST  
REPORT TO STOCKHOLDERS.**

For a number of years prior to January, 1909, L. B. McMurtry and associates had located and re-located some twenty-eight hundred and eighty acres of supposed oil bearing Government land in the Midway Field, Kern County, California, in accordance with the mining laws of the United States.

Because of lack of funds to prosecute the development work on these lands necessary to hold the title as required by the laws of the United States referring to mining location like these, Mr. McMurtry was obliged to transfer to [429—323] third parties who were financially able to do the work one-half, or fourteen hundred and forty (1440) acres of

these lands. After this was done began a struggle to hold the remaining fourteen hundred and forty acres. At great personal sacrifice and effort on the part of Mr. McMurtry the lands were held and the work necessary to keep the possessory title good was done up to the early part of 1910; then the situation became very desperate. Mr. McMurtry had done all the work he could to preserve the rights to the land, but his efforts and those of the persons with him were not sufficient to do all the required work. Furthermore, all the sources from which money could be borrowed had been exhausted, and Mr. McMurtry found himself without funds to do any more work and without the means of raising any more money. It looked then as though all of the lands would be lost, and as though all the work and hardship undergone had been to no purpose.

Just at this time, and as a last resort, Mr. McMurtry fortunately made an arrangement with the Associated Oil Company of California by which this company agreed to take over the fourteen hundred and forty acres of land; to do all of the work necessary to preserve the title to the lands and to pay therefor to Mr. McMurtry out of the oil produced from the land, if any, twenty cents per barrel. The company, however, had the right to abandon any part of the land at any time and turn it back to Mr. McMurtry, and there were also many other onerous conditions in the agreement which it is not necessary to detail here. Suffice it to say that it was the best agreement that could have been gotten at the time in view of the great danger that was threaten-

ing the loss of all of the lands. It was the only thing to do to save what we now have.

There were many people whom Mr. McMurtry felt should be beneficiaries of this agreement which he had made. There were the locators (prior and recent); there were the people who had given money to aid in carrying on the work of holding the lands until they were sold; there were those who had worked and watched night and day to see that hostile parties had not jumped the lands and taken them away; there were men who had labored on the lands doing the assessment work; and finally there was Mr. McMurtry himself, and Mr. Hoepfner, the first of whom had conceived and carried out the plan of getting and holding the lands, and the latter of whom had done yeoman's work in keeping off trespassers and jumpers.

In order that all of these people should share in this contract with the Associated Oil Company, the Pacific Oil Lands Company had formed, August 17, 1911, and its stock was divided up among the various people above named, or provision made to reimburse such as were given no stock. To this company Mr. McMurtry transferred his contract with the Associated Oil Company covering the fourteen hundred and forty acres of land and 640 acres of land in San Benito County and [430—324] the stock of the company went to those who had contributed in any way to getting and holding the lands.

In the working out of this contract various difficulties presented themselves to the Pacific Oil Lands



Company. It was hard to keep the Associated Oil Company drilling all the time; there were difficulties in regard to getting at the amount of production on which twenty cents a barrel should be paid; and worst of all, there was always the chance of having the land rejected and turned back to the Company.

Finally, in August of 1913 a new agreement was negotiated by Mr. McMurtry, acting for this company with the Associated Oil Company, by which the Oil Company agreed to pay for the fourteen hundred and forty acres of land one million three hundred seventy-five thousand (1,375,000) dollars, seventy-five thousand (75,000) dollars down and the balance in monthly installments of twenty thousand (20,000) dollars per month. This contract for the first time gave the Company an assured definite amount available, and left only one opening by which future payments shall be defeated. That is, if the Government shall take away the land sold, the payments under the contract stop from the date of such taking away, and there is no further obligation on the part of the Associated Oil Company to make any more payments.

In this connection it is well to state that up to the present time no title to any of the lands sold has been obtained from the Government. The Associated Oil Company simply holds possession of the land, but we believe everything has been done to entitle it to the patent. However, there is always the danger of the Government refusing to grant patents

to the land, in which event all our rights under this contract shall cease.

As to what the future will develop, we do not pretend to know, but we hope for the best, believing, as we have said, that everything has been done that could be reasonably done under the laws of the United States in regard to acquiring title to these Government oil lands.

#### ANNUAL STOCKHOLDERS' MEETING.

The annual stockholders' meeting of the company was not actually held until November 17th, 1913, the same having been adjourned from the date of call, August 18th, 1913, to that date to insure a quorum being present.

At said meeting the following directors for the ensuing year were elected: L. B. McMurtry, E. A. Hoeppner, F. E. Harrison.

The President of the company presented, at said meeting, the following report showing receipts and disbursements of the funds of the company from the date of [431—325] organization, August 17, 1911, to August 1, 1913:

#### RECEIPTS:

Cash received by the Company from the production of oil under old agree- ment of sale with the Associated.	
Oil Co. ....	165,246.00

#### DISBURSEMENTS:

Commission paid to selling agents (Gar- rett & Watson) for negotiation first agreement of sale.....	16,524.60
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Liquidation of outstanding and assumed obligations, including moneys advanced by parties prior to sale of lands, legal outlays, etc., etc.....	92,665.41
Paid to locators direct, and the attendant expense of securing ratifications of power of attorney, etc.....	9,991.30
Salaries to Manager, assistant manager, and secretary and treasurer.....	38,166.60
Incorporation of Pacific Oil Lands Co...	300.00
Field, Office and Operating expenses....	3,680.50
Cash on hand (July 31, 1913).....	3,917.59
	<hr/>
	165,246.00

From what has gone before, it will appear patent to each stockholder of the company, that the agreement of sale of August 1913, with the Associated Oil Co., calling for the payment to the Pacific Oil Lands Co. of \$1,375,000 constitutes the main assets of the company.

As against this as a liability there stands, as of the same date (July 31, 1913), outstanding obligations assumed at the time of the incorporation of the company, an indebtedness of approximately \$150,000.

The company holds as an asset, in addition to the above, 640 acres of land in San Benito County, California, which will; we believe, prove of value once the field in which said land is located is proven up as oil land.

Yes, I have the envelope in which this report, letter and check came and hand the same to you.

(Deposition of Harry B. Thorn.)

(Said envelope, marked [432—326] Plaintiff's Exhibit 36 and made a part of this deposition is as follows:)

**Plaintiff's Exhibit No. 36.**

(Envelope)

PACIFIC OIL LANDS CO.

748, 749, 750 Mills Building,  
San Francisco.

(Circular Stamp)

San Francisco, Cal.

Jan. 8

2 - P. M.

1914

(Address:) Harry B. Thorn,  
16 East 33rd St.  
N. Y. City

c/o F. A. Burdett

Yes, I read that report several times immediately upon its receipt and was conversant with its contents. The next incident that I recall was, I believe, in March in the same year when my father came to see me and he explained that there had been a little change in the condition of sale or rather that a new agreement of sale had been drawn up in which the company was to receive more cash and the terms of the agreement were to be lower. By company I mean Pacific Oil Lands Company. Mr. Searls, I believe, was handling this as a little—I don't know what you would call it—speculation or high finance of his own. As I stated before, my father said I could still hold my stock and undoubt-

(Deposition of Harry B. Thorn.)

edly there would be similar dividends from time to time, as I had received before, but that the patent had not been granted yet and the Government might or might not grant the patents. Mr. Searls offered to buy the stock from me for \$250, or I could keep it and take my chances on future dividends. I took the \$250. I admit that I am just a little hazy on what he was doing, [433—327] but he got the Associated Oil Company to buy the property outright, instead of paying twenty cents per barrel, which caused a lot of figuring and confusion. The outright price to be paid by the Associated Oil Company for these lands was \$1,325,000; \$75,000 down and \$20,000 a month. Yes, I signed this certificate of stock No. 34 and surrendered it to my father. No, have received no further dividends since. Yes, I knew how many persons were interested as locators in these transactions at that time. There were thirty-two. Presume I knew how many shares of stock each locator had received. Cannot remember how many shares each locator received. As I have said before, I don't remember, now, but I presume I did, because I told my father I was satisfied with my portion. As I recall it, there was some who had done a lot of work, some who had advanced money, and who had received more than I did. Cannot remember who they were. I don't remember whether McMurtry, A. E. Hoeppepner or F. E. Harrison were locators; there were thirty-two and I only knew about half a dozen. I presume I knew how many shares of stock McMurtry, Hoeppep-



(Deposition of Harry B. Thorn.)

ner and Harrison held in this company before I parted with my stock, as I assured my father I was satisfied with my portion.

Q. At the time you surrendered Certificate No. 31, were you entirely satisfied with all the transactions relating to lands which had up to that time been located by Mr. McMurtry, acting under this power of attorney?

A. In answer to that, I would say that on the back of the first check I received I waived all rights in the company; when I submitted, when I released the stock, I signed a similar statement; I was treated as one of the stockholders and Mr. McMurtry had [434—328] not ceased operations at other times as far as I could see, and I was satisfied.

No, I never repudiated this power of attorney to McMurtry and did not sign it for the purpose of permitting McMurtry to use my name for the purpose of getting oil lands for himself, or for anybody but the locators, and there was never any talk between myself and my father or McMurtry or Hoeppner or Searls or Harrison or anyone upon the subject as to whether Mr. McMurtry or anybody else was to have any interest in any lands located by Mr. McMurtry under my power of attorney, and there was no understanding or agreement express or implied, between myself and McMurtry or any of the other locators, that McMurtry, Hoeppner, Wilson or the Empire Oil & Development Company would have any interest in any of these lands. I don't remember whether or not the letter which I

(Deposition of Harry B. Thorn.)

received in Mexico with this \$250 was a dividend to the locators on account of money obtained on located lands, or whether I learned this on further questioning my father when I saw him. I have the idea now that it was not all the money that I received. This \$250 was a portion of the money realized to be distributed among the locators, but I cannot say that was stated in the letter accompanying the check, but at any rate, I got this impression either in the letter or from my father afterwards. [435—329]

**Deposition of Smith H. Freeman, for Plaintiff.**

SMITH H. FREEMAN, called April 21, 1917, on behalf of the plaintiff, testified by deposition as follows:

Am a mechanical engineer and reside in Roselle Park, New Jersey. In December, 1907, resided at Bronx, New York, and was of the same occupation. Became acquainted with L. B. McMurtry, F. E. Harrison, Frank H. Searls and C. W. Thorn in about 1905. During 1907 was salesman for mechanical devices for Manning, Maxwell & Moore, at 87 Liberty Street. I had business relations with McMurtry, Searls, Harrison and Thorn prior to 1907. Was a director in the Empire Oil Company and was in their office daily. Acquired stock and became a director in the Empire Company in the early part of 1907. That was my first association in any oil company with McMurtry.

Q. How did you acquire your stock in the Empire

(Deposition of Smith H. Freeman.)

in 1907? A. Labor and attention. Q. And of what did that labor and attention consist? A. Office work. No, was not engaged in soliciting purchasers of stock in this company. My duties in the Empire Company were clerical. Never was engaged in mining. No, am not a mining engineer. Am a mechanical engineer. Searls was in the office every day for an hour about noon time and McMurtry was there attending to his affairs, but what their personal affairs were, I don't know, but it was generally office business.

Q. The records of Kern County, California, disclose that on December 18, 1907, S. H. Freeman, together with a number of other persons, appeared before Samuel C. Worthen, a notary public, in and for the County of New York, State of New York, and executed a power of attorney by which L. B. McMurtry was appointed their [436—330] true agent and lawful attorney. (Substance of Plaintiff's Exhibit 7 stated.) Are you the S. H. Freeman whose name appears on that document (showing witness)? A. Yes, sir. The general talk in the office was that Mr. McMurtry was going west and that he would like to locate some lands and wanted to know if I would take an interest in it. I told him if there was any money in it, and if the subsequent payments to advance that interest were not too great, that I would give him a power of attorney to make locations for me. The condition of affairs of the Empire Company were a little low financially about that time.

(Deposition of Smith H. Freeman.)

Q. Was there much or any stock of the corporation being sold at that time?

Q. Were you familiar with the books of the Empire Company? A. Not from observation, but from general talk in the office. Q. Do you know whether there was any stock of the Empire Company being sold along in October, November or December, 1907? A. I think I remember hearing something about some stock being sold in Canada. This matter had been discussed probably six months before I had actually signed this power. I had some conversations with McMurtry generally. Don't remember that there was any talk about a power of attorney. There was a general talk regarding oil fields in California in the Midway District. The understanding was that he was, when he received those powers of attorney, he was to be the agent for the different parties that gave him the powers of attorney. Think the Empire office broke up there in 1909. Don't remember the date McMurtry left New York, but remember the circumstances very well. Think he left [437—331] a week or ten days before Christmas, 1907. Heard from McMurtry in a general way regarding these transactions during the year 1907. Yes, heard these lands had been located under my power of attorney. Heard at the time what lands they were, but don't now know positively what they were. Know that they were located in Midway. No, do not know the area of lands located under my power.

(Plaintiff's Exhibit 37, the same being the so-

(Deposition of Smith H. Freeman.)

called ratification of this witness dated August 16, 1910, offered in evidence and is as follows:)

(This is similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman.) [438—332]

That is a copy of my signature to Exhibit 37. It was presented to me—C. W. Thorn brought it to me at my office at 170 Broadway. Had only a general conversation about it. Don't remember what it was. I read the paper but know the language only in a general way. (Substance stated to witness.)

Q. Was there any explanation or statement made to you at that time in regard to the contract between Mr. McMurtry and Herrin, dated August 4th, 1910?

A. If I remember correctly, there was a negotiation on out there in California regarding the sale of those lands, and McMurtry was working in our interest. I understood indirectly there were thirty-two locations made by McMurtry under my power of attorney in Kern County, known as the Midway District. Did not know the area. Was not advised in detail as to this contract of August 4, 1910. Don't now remember what I was advised as to that. Talked in a general way with Searls and with Herrin when he was here, in regard to these oil lands, but learned only in a general way the situation and status of the land. No, did not learn how many locations had been made in my name, not to my knowledge. Yes, I received some money in connection with this matter.



(Deposition of Smith H. Freeman.)

Q. Well, I invite your attention, Mr. Freeman, to a check in substance as follows:

“No. 103. New York, September 22, 1910.  
Second National Bank of the City of New York.  
Pay to the order of S. P. Freeman, Two Hundred and fifty dollars (\$250.) (Signed) F. H. Searls.”

On the back thereof appears the following in typewriting:

“Received from L. B. McMurtry, Two hundred and fifty dollars in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, [439—333] on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 18th day of December, 1907.”

And underneath that typewriting is the signature of “S. H. Freeman.” Is that your signature, Mr. Freeman (showing witness)? A. Yes, sir. Yes, the typewriting was on the back when I signed and I read it. The check was handed me by Searls in his office. He had told me that it was coming from California, as a part payment of my interest in that location. I don’t know where Searls got the money from which this payment was made. I know what I signed there and I gave him a release. I knew thoroughly at the time what I was doing. Don’t remember that there was any explanation made by Searls as to why he wanted me to sign this release. Yes, after signing this check I was given stock in an

(Deposition of Smith H. Freeman.)

oil company—the Pacific Oil Lands Company. Don't remember just when Searls gave it to me personally at his office. Presume this certificate of stock No. 22 for 1000 shares is the one I received. That is my signature on it and also on the receipt on the stub dated September 13, 1911. When Searls handed me the certificate he made merely an ordinary remark in saying not to dispose of that or hypothecate it in any way, that it was worth considerable more than the face value of it. Don't recall that he told me anything about the Pacific Oil Lands Company; not that I remember particularly. I knew in a general way that the company had been formed and that McMurtry was president. Received this information pretty close to the time I received the certificate. Did not, at the time I received the certificate, know fully as to the resources and assets of the company. Don't remember that Searls told me why he was giving me this certificate. [440—334] The only thing I knew as to the stockholders at that time was that they were only those I had been associated with, Thorn, Searls, Harrison, Harder and others whose names I don't recall, known as the Jack Thickens crowd; I don't know their names today." Don't know how many shares the others received. Yes, I understood that Hoepfner and McMurtry were stockholders. Don't know how many shares they had.

(Witness' attention invited to Plaintiff's Exhibit 38, dated August 21, 1913.)

Yes, I executed that paper at Newburgh, Orange

(Deposition of Smith H. Freeman.)

County, New York. Thorn brought it to me personally. There was only a general conversation at the time. He told me that McMurtry wanted this proxy to vote my stock. No, I did not know fully at that time the resources or assets of the Pacific Oil Lands Company. After signing this proxy I sent it to McMurtry in California.

(Plaintiff's Exhibit 38 read into evidence as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman.) [441—335]

(Plaintiff's Exhibit 39, the same being dated December 11, 1913, shown witness.)

Yes, I signed Exhibit 39. It came to me by mail with a letter.

(Plaintiff's Exhibit 39 read into record as follows:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.) [442—336]

(Letter produced by witness and marked Plaintiff's Exhibit 40 offered and read in evidence as follows:)

**Plaintiff's Exhibit No. 40.**

(Letter-head)

**"PACIFIC OIL LANDS CO.**

**"August 4, 1913.**

**"You are hereby notified that the regular (ink) annual meeting of the stockholders of the PACIFIC**

(Deposition of Smith H. Freeman.)

OIL LANDS COMPANY will be held at the principal office of the Company, 749 Mills Building, in the city and county of San Francisco, State of California, on Monday, the 18th day of August, 1913, at 10 o'clock A. M., for the purpose of electing a Board of Directors for the ensuing year and the transaction of such other business as may come before the meeting.

“F. E. HARRISON,  
“Secretary.

“Mr. S. H. Freeman,  
“87 Liberty St.,  
“New York City.”

I have not the remotest idea what I did with Exhibit 39 after executing it. Yes, I believe I received money from the Pacific Oil Lands Company after that.

Q. I invite your attention, to a check, in substance, as follows:

“San Francisco, 1/8/14. No. 1188. Bank of California, National Association, San Francisco. Pay to the order of S. H. Freeman, Twenty Dollars. Pacific Oil Lands Co., F. E. Harrison, Secy-Treas., L. B. McMurtry, Vice-Pres.”

Endorsed on the back of that check is the following:

“Pay to the order of Lucy S. Freeman. S. H. Freeman. Lucy S. Freeman.” [443—337]

Is that the check you just referred to, or the money you have just referred to? A. Yes, sir, I received that twenty dollars. How did you receive it? A. By letter.

(Deposition of Smith H. Freeman.)

(Letter produced by witness marked Plaintiff's Exhibit 41, offered and read in evidence as follows:)

**Plaintiff's Exhibit No. 41.**

(Letter-head)

**"PACIFIC OIL LANDS CO.**

**"January 8, 1914.**

**"Dear Sir:**

**"Inclosed you will find dividend check for \$20.00, the same representing your *pro rata* of the first distribution to the stockholders of the company of cash assets amounting to \$20,000, and to which distribution we hold your written consent.**

**"Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.**

**"Wishing you a very happy and prosperous 1914, we beg to remain,**

**"Very truly yours,**

**"PACIFIC OIL LANDS COMPANY,**

**By F. E. HARRISON,**

**Secretary."**

Yes, with that letter was the report to the stockholders. (Witness produces same, it being similar to Plaintiff's Exhibit No. 35.)

I surrendered this certificate of stock No. 22 to F. H. Searls. He gave me \$250 for it. Don't recall the conversation, only in a general way. Don't think he said why he wanted it. He sent me word to meet him at the Knickerbocker Hotel. [444—338]



(Deposition of Smith H. Freeman.)

Q. This date (on the assignment of the certificate of stock) apparently, is March 27th, 1912, and it appears that as late as January 8, 1914, you were still drawing dividends from the Pacific Oil Lands Company. Can you explain why it was that you surrendered your stock on March 27th, 1912, to Mr. Searls, and afterwards drew dividends from the company? A. I have no idea why it was so. Never received any money after the receipt of this \$20 on or about January 8, 1914. No, am not a stockholder in the Pacific Oil Lands Company. Not since I surrendered certificate No. 22. No, at the time I surrendered this certificate I did not know who else were stockholders in the company, not to my knowledge, nor did I know fully what the resources and assets of the company were. I knew that the lands which had been located by McMurtry in my name had been sold and knew of these contracts with the Associated Oil Company, but did not know specifically what had been done, but I knew Mr. McMurtry was very much indebted from the moneys received, and he had paid some of those debts. No, did not know whether or not these contracts with Herrin and the Associated Oil Company had been assigned over to the Pacific Oil Lands Company.

Q. You spoke about Mr. McMurtry having paid off his debts. What debts were those? A. Well, that was all a personal matter at that time between Mr. McMurtry and myself. Q. Was that a personal debt owing to you? A. No, sir. Q. Who was

(Deposition of Smith H. Freeman.)

Mr. McMurtry owing, if you know? A, Well, I understood he was owing Mr. Stratton. Q. Mr. H. C. Stratton? A. Yes, sir. Q. Do you know what that was for? A. For obligations at the works largely.

Yes, I was in San Francisco last fall. Went in response [445—339] to a telegram from Mr. Helm and was there five weeks. No, did not testify while there. Yes, had conversations with various attorneys engaged in this litigation. No one suggested that I ought to sue Mr. McMurtry.

Cross-examination.

Yes, when I received this stock in the Pacific Oil Lands Company I understood from Mr. Searls that the stock was being distributed among my colocators and myself on these California lands. I recall that I received the first \$250 in September, 1912. Don't remember when I signed this ratification or when I received this \$20 dividend check without referring to memoranda. My recollection is that I disposed of this stock to Mr. Searls in 1914. This \$250 I received from the stock was in the form of a check which I endorsed and Searls gave me the money there in his office. Yes, that was shortly after I signed the ratification.

Q. Now, can you tell me what you did with that money, where you deposited it, I mean whether you deposited it or not; I am only trying to get the date of that sale, because there is a mistake on the date on the back of that certificate; I think it should have been 1914 instead of 1912, and I want to find out when you deposited that \$250 check, if you did,

(Deposition of Smith H. Freeman.)

which would give you the date of 1914, instead of 1912?

Mr. HALL.—I think that your theory is right about it.

Q. Not only that, but you signed the consent to the dividend in 1913, and the proxy in 1913? A. Yes, sir. Q. Can you ascertain from your bank account whether you deposited that money in March, 1914? A. That was paid to me in cash and I put the cash in my pocket; I didn't deposit it. [446—340] Yes, I will look at my bank account and see when I deposited this \$250.

Q. I think it will straighten this out. Now, can you state the thing this way: That when you signed the proxy to vote the stock at a meeting to be held in San Francisco, and when you signed the consent to the dividend of \$20,000, to be declared, and when you got the \$20.00 dividend, that you were still a stockholder in that company? A. Why, yes. Don't remember where I got the knowledge that McMurtry for these locators was owing Mr. Stratton some money.

Q. Don't you now know in a general way that you received information that the title to these lands were involved, and the Government was claiming some interest by reason of withdrawal or something of that kind? A. Indirectly, yes, sir. Q. Is it not true when you disposed of this stock to Mr. Searls that he told you that there was a question about the title to the lands and that you could either take that \$250 cash or take your chances on it? A. Yes,

(Deposition of Smith H. Freeman.)

sir, I remember that very well. Q. And is it not equally true that you did know and you were told by Mr. Searls that the contracts that you were ratifying in that ratification had been transferred to this corporation by Mr. McMurtry in order to better handle the thing, and that if the Government took these lands away, there would be no payments at all under that contract; is that true? A. Yes, sir. Q. I am simply asking you the question to refresh your memory, so that you can see that you were advised by the report itself and by Searls before that, at the time you got the stock, that these contracts which you ratified a short time before, had been transferred to that company; don't you remember that? A. Certainly I do. At that time I only knew of the mining laws in a [447—341] general way. No, I did not at any time make any contract or agreement with McMurtry that he could use my name to get more land than he was entitled to under the law, and it was not my intention that anybody should have any interest in the lands that were located in my name or that the Government would be defrauded of any of its public domain, or that this power of attorney should be used to violate the laws of the United States. Yes, I understood when I read this certificate dated August 16, 1910, that McMurtry had recorded the power of attorney I had given him in Kern County, California, and that I was ratifying it, and that McMurtry had made contracts under the power of attorney as my agent in fact, with Herrin and others, dated

(Deposition of Smith H. Freeman.)

August 4, concerning the property located under the power of attorney, and that I was ratifying the same. I executed that ratification believing that I was a *bona fide* locator, and that the location had been made for myself and not for the benefit of McMurtry or anyone else. No, I did not pay anybody any money for this Pacific Oil Lands Company stock and it was not a present. It was delivered to me to cover my interest in the lands located, Yes, when I signed the endorsement on the check for \$250, which Searls cashed for me, I was advised that the \$250 was being distributed to each locator out of the funds that were authorized by Mr. McMurtry through sale of some of the located lands, or contracts with Herrin and others, and that they wanted me to endorse that in order that in the future that he could handle the properties to better advantage and that I was not giving up my entire interest in those located lands. Yes, I knew I still had an interest in the lands. [448—342]

Redirect Examination.

Q. If you had known prior to the time and at the time you executed this power of attorney that it would be used for the purpose of acquiring more public domain than one person is by law allowed to acquire, would you have signed any such?

A. I don't think that I would, giving them more land than was allotted, as I get the question, to an individual. [449—343]



**Deposition of Frank D. Taylor, for Plaintiff.**

FRANK D. TAYLOR, called April 23, 1917, on behalf of the plaintiff, testified by deposition as follows:

Am a publisher and printer at No. 1 Montgomery Street, Jersey City, N. J. Reside at 537 West 149th Street, New York. Lived in California from 1888 to 1902, at Los Angeles, Alameda, Oakland and San Francisco. During the latter part of this time I was engaged in the fire insurance business. Was never engaged in mining or any other enterprise or a stockholder in any mining or oil business, nor did I ever locate any public lands under the mining laws, and am not familiar with the public mining laws. Only in a general way; I knew land could be taken up by location, etc. Was with the Underwood Typewriter Company when I first came to New York. Yes, I knew Edwin L. Powell in New York City since 1902. He was my most intimate friend in the east. Boarded at his house about two years. Never had any business dealings with him,

Q. The records of Kern County, California, disclose, Mr. Taylor, that there is recorded therein a power of attorney (substance of Plaintiff's Exhibit No. 7 stated). Are you the Frank D. Taylor whose name appears upon that instrument (showing witness)? A. I am. I signed this through the solicitation of Mr. Powell. Think he first mentioned it in November, 1907. He told me that Mr. McMurtry was going to California, and wished to go out there before the 1st of January, and he wished to secure

(Deposition of Frank D. Taylor.)

locators—it had something—in order to explain that right, Mr. Hall, I must say something about the old Empire Oil & Development Company, because one was dovetailed into the other. Yes, I knew in a general way that the Empire Company was in difficulties and had been trying to sell stock for quite a time. Had known [450—344] McMurtry since the spring of 1907. Had been in the office a good many times and talked over the general situation out there in California with him. Never met Searls. Met Harrison and Thorn there in the office prior to the execution of this power of attorney. Mr. Powell had been selling stock for the Empire Company, and after the company started they had to quit, and everybody was in financial straits, as I understood it, in the Empire, and Mr. McMurtry was going out to make these locations and Mr. Powell came to me as a friend of his, and told me that there was an opportunity there to make something, some money; that Mr. McMurtry was very familiar, as he expressed it, with the oil district there in California, and if the land was located and did develop anything, we would make a lot of money. Do not recall that any particular county or area in California was mentioned. No, they talked about the Kern River District, and in private talks McMurtry mentioned the San Benito field. I executed this power at the office of the Empire Company, No. 299 Broadway. Went there with Powell at his invitation. Don't remember any one being there except McMurtry, Powell and myself. Yes, I

(Deposition of Frank D. Taylor.)

believe I heard about this power from Powell during the year 1908, but nothing definite. Was in Boston that year until July with Powell. The only thing I learned concerning McMurtry's action during 1908 was that there had been no progress made; there was nothing definite one way or the other. Cannot say exactly when I first had information about any progress. Powell and I corresponded after that and I saw him at intervals and undoubtedly received information from him in general conversations, but the best of my recollection is there was nothing definite in any way until I saw Mr. McMurtry in 1910. Don't remember that at the time I signed [451—345] this power there was any understanding on my part as to the number of claims which were to be located in my name. The first definite information I received as to what McMurtry had done under this power I think was in 1910 from McMurtry. I made an appointment by telephone some time in August and met him at night in the St. James Building in New York City. He had either written me or left word for me and I called him up. That was when Mr. McMurtry brought the ratification of the power of attorney to be signed. At that time the gist of the conversation was that they had deals in California which they were negotiating, and that this ratification was necessary; I think it was required by the laws of the State of California, if I remember rightly, and also to satisfy the other parties to the deal. No, I was not advised as to the area of lands involved or

(Deposition of Frank D. Taylor.)

the number of locations made in my name. No, he told me nothing about that. No, I made no direct inquiries on the subject. We had a general talk; I was with him, I guess, twenty minutes or a half hour. Yes, I signed the ratification. (Plaintiff's Exhibit No. 42, the same being a photographic copy of the ratification of the power of attorney executed by Frank D. Taylor, and others on August 24, 1910, shown witness.) Yes, I then signed that before a notary. By appointment made that evening I next saw McMurtry at the Knickerbocker Hotel the following day. I then endorsed a check for \$250.

Q. I invite your attention to check No. 101, in substance, as follows:

No. 101. New York, August 25th, 1910.  
Second National Bank of the City of New  
York. Pay to the order of Frank D. Taylor,  
Two hundred and fifty dollars. (Signed) F. H.  
Searls. [452—346]

On the back thereof is the following in type-writing:

“Received from L. B. McMurtry, \$250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 18th day of December, 1907.”

Now, just below that typewriting that I have read to you on the back of that check is the signature “Frank D. Taylor.” Is that your signature (show-

(Deposition of Frank D. Taylor.)

ing witness)? A. It is. That is the check I referred to. McMurtry cashed this check for me. Yes, the typewriting was on the back when I endorsed it and read it. Mr. McMurtry told me the night before that the locators would receive \$250 each; that they had made some money out there, part of which had been spent in development work, and, as I understood it, this amount of money was left over, what was necessary, and they were making this distribution of the money to the locators. He told me that the night before, when I signed the ratification.

(Plaintiff's Exhibit No. 42 offered in evidence and is as follows:)

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Frank D. Taylor, August 24, 1910.) [453—347]

Yes, I read the ratification before signing. No, this contract with Herrin et al., dated August 4, 1910, was not specifically referred to in the conversation with McMurtry. The contracts were referred to as indefinitely. They had not been consummated, as I understood it, and this ratification was necessary to effect the consummation of those contracts of August 4th, nor had I received any information as to the extent or area of the lands affected by the contract or how many locations that had been made in my name were affected by the contract. No, I made no inquiry on the subject. When I endorsed the check next day no specific



(Deposition of Frank D. Taylor.)

advice was given me in regard to the lands or the contract of August 4th. When I signed the check Mr. McMurtry told me that this typewritten matter on the back, as far as that was concerned it was a mere matter of form. You see, Mr. Hall, we trusted absolutely in the integrity of Mr. McMurtry all the way through, the same as you would your own brother. We left it all to him. Don't remember whether I asked about the writing on the back of the check, but he told me about it. The next thing definite that I heard about these transactions was in the following year, 1911. May have heard something through Powell in the meantime, but nothing definite. The next definite transaction was in 1911. Mr. Thorn delivered me a thousand shares of stock in the Pacific Oil Lands Company. Don't know Thorn's initials. It was the old gentleman with white whiskers.

(Certificate No. 18, for 1,000 shares, of the Pacific Oil Lands Company, exhibited.)

Yes, that is my signature on the back of that certificate. It is the one Thorn handed me. The receipt dated September 13, 1911, on the stub of this certificate No. 18 bears my signature. The only thing that impressed itself upon my memory of the [454—348] conversation at the time this stock was delivered to me by Thorn was not to sell that certificate, but to hold the certificate, as he said it would probably prove of great value. No, I received no information at that time except I suppose there was nothing that had been said to me about it before at

(Deposition of Frank D. Taylor.)

any time. Yes, that the first time that I knew such a corporation as the Pacific Oil Lands Company existed. I assumed that I was entitled to it, but he didn't say anything as to that. I remember Mr. Thorn saying—this is to the best of my recollection—that this company was formed to facilitate the business out there for the handling of our affairs. This information came to me at the time I received the certificate. Up to that time I knew nothing about it. No, I did not then know how many locations had been made under my power, or the extent or area of land on which my name had been used as a locator, or what disposition had been made of any lands so located, or what the assets or resources of the Pacific Oil Lands Company were. I assume that Mr. Thorn told me all he knew about it, at the time he delivered this stock. Don't remember that he told me anything about the assets or resources of the company. Did not then know that this contract of August 4, 1910, with Herrin and others had been made or any contracts supplemental to that of August 4, 1910. The notion we had was all very indefinite. These deals were supposed to be in process of negotiation, but nothing had been accomplished. When I received this \$250, in August, 1910, I did not know specifically from what sources the funds had been derived nor had I received any advice as to this at the time I received certificate No. 18. I assumed that the money with which they paid \$250 to each of the locators, we were told by Mr. McMurtry [455—349] was some

(Deposition of Frank D. Taylor.)

money they had made out there, but whether through sales of lands or how they did it, I did not know; there was nothing definite said about it. No, at the time I received the certificate I did not know who the stockholders in the company were. No, I have never seen Major E. A. Hoepfner, nor did I, at the time I received this stock, know how many shares of the stock he held or how many McMurtry held. I knew nothing about it until I heard it in San Francisco, last fall in the courtroom, during the trial in Judge Bean's court. At the time I received this stock the only specific person I knew who held stock in this company was Powell. No, I did not know how many shares he had, but I know—I say I know—my impression is that he had more than I did; I don't know how many though; I may be wrong about it; they might be shares of stock he had in the old Empire. No, prior to obtaining this information in the courtroom in San Francisco, I never inquired as to who the stockholders in this company were. I supposed, of course, that all the locators were stockholders. I have no information as to what McMurtry's or Hoepfner's holdings in the company were. All the information I had I depended upon getting from Mr. Powell. He was in touch with McMurtry, and I got no such information from Powell. The next definite step taken in this matter was in the winter of 1913—1914. Don't remember signing any paper in the summer of 1913. I remember a dividend of \$20 that was

(Deposition of Frank D. Taylor.)

paid and some consent was signed, but I think that was later in the year.

(Plaintiff's Exhibit No. 43, the same being the proxy dated August 20, 1913, shown witness.)

Exhibit No. 43 bears my signature, but I do not recall where I signed that thing; that was in August. I don't remember that, [456—350] but that is my signature, and I undoubtedly signed it. Do not recall who presented that to me. I didn't see anyone connected with the company except Mr. Thorn; I know that. I have no letters from the Pacific Oil Lands Company. I don't recall ever receiving but one, and I am positive as to that; that was a consent and a check for \$20.00, I believe. Don't recall having received a notice of stockholders' meeting of this company.

(Plaintiff's Exhibit No. 43 read in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by Frank D. Taylor, August 20, 1913.) [457—351]

(Plaintiff's Exhibit 44, same being the so-called consent to distribution of dividends, shown witness.)

That is the consent I referred to a moment ago as having been received through the mails. There may have been a letter accompanying it requesting me to sign it, but I have not such letter and don't know that I got any. Think I mailed this Exhibit No. 44 to San Francisco after signing, to McMurtry; or they may have enclosed an addressed envelope; I

(Deposition of Frank D. Taylor.)

think he was in the Mills Building then. I read it before signing. I don't recall definitely knowing from what source this proposed dividend was derived. It was some money on hand, but whether it was from capital or profits, I do not remember now; they did pay me \$20.00, though.

Q. I invite your attention now to a letter on the letter-head of the Pacific Oil Lands Company, which has already been marked Government's Exhibit No. 32; it is a letter dated December 3d, 1913, signed "Very respectfully yours, Pacific Oil Lands Company, by F. E. Harrison, Secretary"; will you please read that (showing witness)? A. Yes, I think I received one of these.

Yes, I am reasonably certain that I received a copy of this letter of December 3d, 1913, at the time the consent was sent me.

(Plaintiff's Exhibit No. 40, the same being dated August 4, 1913, shown witness.)

No, I don't remember of receiving a similar letter and reading the same does not refresh my memory as to the execution of the proxy in August, 1913. I cannot remember anything about that proxy. After I signed this consent, Plaintiff's Exhibit No. 44, I received \$20.00. [458—352]

Q. I hand you a check which is in substance as follows:

"No. 1184. San Francisco, 1/8/14. The Bank of California, National Association, San Francisco. Pay to the order of Frank D. Taylor, \$20.00. Pacific Oil Lands Co., F. E.



(Deposition of Frank D. Taylor.)

Harrison, Secy-Treas. L. B. McMurtry, Vice-Pres.

Endorsed on the back thereof is the name of "Frank D. Taylor." Is that the check for the dividend you just referred to? A. Yes, sir, it is, it must be; it is the only one for \$20.00 that I had. That is my signature on the back of this check. Think I received this check through the mails and may have received a letter with it, but have not it.

(Plaintiff's Exhibit No. 41, dated January 8, 1914, shown witness.)

I don't remember receiving that letter. I don't think I ever received that, not in that form; owing to the fact that it mentions a statement, I know I never had any statement of the affairs of the company of any kind. If there was a letter with this \$20.00 check, it was nothing more than one saying that the check was enclosed or something to that effect.

Q. I invite your attention to a paper marked Government's Exhibit No. 35, entitled, "Pacific Oil Lands Company, First Report to Stockholders," and I will ask you to examine those three sheets of paper carefully, Mr. Taylor (showing witness).

Mr. ACH.—Ask him whether he had received that before.

The WITNESS.—I never had any report at all. This is the first one I looked at in San Francisco.

Q. Did you ever see a copy of this report before? A. No, I do not recall ever seeing it. Q. Was it exhibited to you [459—353] in San Francisco? A. I

(Deposition of Frank D. Taylor.)

don't remember its being exhibited to me, but it was mentioned on the stand there. Q. I want to get just your best recollection about the situation: do you say that you did not receive such a report or that you now do not remember having received it? A. I never received any report of any kind. The next transaction occurred in March, 11. That was when Mr. Thorn took up the 1,000 shares of stock. Mr. Thorn came into the office to see me in reference to the stock and told me the general condition of the company was very bad; that they had been unable to accomplish whatever they were trying to do, and gave me to understand the affairs were very black, and that they were paying \$250, a distribution of \$250 for the stock, the outstanding stock, so I assumed from what he told me that that was what was left out of the wreck; and he also said that the affairs were not yet wound up and held out rather vague hope that there might be something later on.

I surrendered this certificate No. 18 the following day and received \$250. The only conversation at that time was along the same general line. That is my signature on the back of certificate No. 18. It was endorsed in blank. The name Walter S. Brann has been filled in since. I was not at that time informed as to who was to be the transferee. Nothing was said about that by Thorn. I understood they were going to wind up the affairs of the corporation. I understood that all of the stock was being taken up. No, I was not advised as to the assets or resources of the company at the time I surrendered

(Deposition of Frank D. Taylor.)

this certificate 18. I didn't think they had any assets to speak of at that time; after the conversation with Mr. Thorn I was surprised to get \$250, I was surprised to get anything. [460—354] No, I did not then know how many locations had been made in my name or the area or what contracts had been made affecting such lands. I did not know that this contract of August 4, 1910, or any supplemental or amend contracts based thereon had ever been consummated. Yes, I think I then knew what the capital stock of the company was, but not who the stockholders were. I had been told that Mr. Powell had stock; I knew all the locators had stock in the company. No, I did not know Hoeppner or McMurtry were stockholders. No, I made no inquiry as to who were stockholders or the number of shares each held. No, after surrendering this certificate No. 18, I received no further moneys on account of those locations nor had anything more to do with the Pacific Oil Lands Company as a stockholder. No, prior to surrendering this certificate I made no inquiry of Thorn or any other person with regard to the consummation of these contracts mentioned in the ratification which I signed in August, 1910. I made no inquiries whatever. If anything had come up of importance Mr. Powell would have let me know. Yes, I am the Frank D. Taylor who is a party plaintiff in the action of Frank D. Taylor and others against L. B. McMurtry and A. E. Hoeppner, which is now pending in the United States District Court for the Northern Division of

(Deposition of Frank D. Taylor.)

California. Yes, I was in San Francisco last November and December and testified there in Judge Bean's court, but don't know that it was in suit A-38, United States vs. Thirty-two Oil Company and others. Don't know the name of the suit.

(Plaintiff's Exhibit No. 44, the same being consent to the distribution of dividends by the Pacific Oil Lands Company, dated December 13, 1913, offered and read in evidence:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Frank D. Taylor Dec. 13, 1913.) [461—355]

Cross-examination.

Yes, when Thorn came to me to get me to give up my stock in the Pacific Oil Lands Company he painted things very black. Yes, sir, I understood it was a wreck. He told me that they had not succeeded in making contracts. I don't know whether he used that word or not—the deals he was trying to consummate, and I believe he said he was threatened with litigation. I don't remember his mentioning anything about the lands having been withdrawn by the Government or the Government undertaking to institute proceedings in court to recover withdrawn lands. He did not go into details, and I don't remember any specific statement. I don't know whether he told me it (the stock) was being retired or not. I understood that it was all being retired, and that they were going to wind up the affairs of the company. I have only a general im-

(Deposition of Frank D. Taylor.)

pression that I received from his conversation. I assumed that the litigation he spoke of would be in reference to the title to the lands. I knew that there was threatened litigation, but Thorn did not specifically mention the Government, but my understanding was that it was with the Government. Don't think I had ever talked with Powell about this possible litigation. Had not heard of it up to that time. At the time I signed this ratification for McMurtry, I don't remember of his going into details, but he told me it was necessary to sign the ratification to satisfy the other parties to the other contract; that is one of the things he told me was necessary. No, he did not tell me how I was to be paid for the lands or that I was to be paid out of the oil these people were to drill for on the lands. I assumed this, because I knew they were oil lands. I understood that this [462—356] \$250 he paid me was money that was left over, that they made out there, through some deal; whether it was from leases or what, what it was, I did not know. No, to the best of my knowledge I have not revoked or tried to modify this power of attorney given McMurtry. No, at the time I talked with Powell about signing this power of attorney, no suggestion was made to me by Powell that he wanted me to let McMurtry use my name nor that McMurtry could get lands out in California that he could not otherwise get for himself. I expected Mr. McMurtry would be reimbursed for what he did out there; I did not expect him to do it for nothing. No, nothing what-



(Deposition of Frank D. Taylor.)

ever was said by anybody as to any interest he might have in the lands that might be located. No, there was no understanding or agreement between Powell and myself or anybody else that McMurtry was to have any interest in any lands that might be located in my name either before or after signing the power of attorney. We all understood that McMurtry was in some way to finance the development of these lands. Whether he would do it, whether through the lands or not, I don't know, but we figured that he would have something tangible to work on if he was able to make locations. I understood from Mr. Powell that I incurred no financial obligation. I think Mr. McMurtry had the power of attorney to raise money to finance the working of the land. Yes, at the time of executing the power of attorney my attention was drawn to the fact that McMurtry was given the right to contract concerning the sale of and otherwise as to the lands located for me, and to mortgage them, I understood from Powell that there was development work to be done. Yes, at the time Thorn gave me this stock I understood that all the locators were treated alike in the delivery of stock. Yes, Thorn told me [463—357] this: that the company was organized solely for the purpose of better handling the interests of the locators. No, I certainly had no intention when I executed that power that it should be used for the purpose or defrauding the Government or in aiding McMurtry or any person, firm or corporation in defrauding the Gov-

(Deposition of Frank D. Taylor.)

ernment out of this land. I did it to benefit myself. No, I would not have signed the power if I had known McMurtry at any time would use it for the purpose of attempting to cheat or defraud the Government. Yes, I believe that McMurtry came to me in August, 1910, for this ratification or said something on the subject of making a report or an account to me and the other locators when anything definite was accomplished. I believe he did. I would not say positively; but I know we were always waiting and supposed to get a report, but it was never received. Yes, it was my understanding and intention from the start that each of the locators would be the full and complete owner of an undivided interest in whatever locations might be made, and that after something had been accomplished, the matter had been disposed of, or money had been realized, that a report would be made and an account had and then an agreement would be arrived at as to how much McMurtry would be paid for his services. That was my understanding. As to what Mr. McMurtry would be paid for his services, that was left to the future. I expected the locators and Mr. McMurtry and all those interested to get together if anything was accomplished out there worth while.

Redirect Examination.

I cannot say from just what source I received this understanding. That was my general understanding. Mr. Powell and myself had talked the

(Deposition of Frank D. Taylor.)

matter over in a general way and [464—358] numerous times. The whole thing was left to Mr. McMurtry entirely. Mr. Powell had the greatest confidence in him and so did I, but, of course, I didn't know Mr. McMurtry as intimately as Mr. Powell did. There were no details worked out at the time I signed this power of attorney. I didn't say there was any details worked out. I understood from the beginning that McMurtry would be reimbursed finally if the lands proved profitable, but, as to what his reimbursement would be nothing was ever said. I might have absorbed that understanding from Mr. Powell and others when the matter was talked over, but as to what understanding it was, nothing was ever said definitely. Yes, he was to be reimbursed from the profits made from the lands. The locators—I anticipate that is the only way I can put that—in case oil was discovered on the lands, and they proved of value, all the locators would get together with Mr. McMurtry and some definite agreement would be made at that time for his reimbursement. If he had been successful, I don't think there would have been any trouble in coming to an understanding. I did not understand that Mr. McMurtry had anything to expend personally in developing the oil lands; any money that he got hold of for development work would be raised on the lands that he located.

Q. Who was to bear the expense of bringing these lands to a point where they could be realized on, so that future development work could take place?

(Deposition of Frank D. Taylor.)

A. The locators. No, I was never called upon to advance anything for development. As to how McMurtry was to be reimbursed if the lands turned out unprofitable and no advancement on them could be procured, that was left to the future; there was nothing definite said about it. No, I did not expect to reimburse him [465—359] personally out of my pocket. I did not expect to advance any money, although if the prospects had been good and I had been called on for a small sum, I would have done so.

Recross-examination.

Q. You used the word "reimbursement." Did you intend by the use of the word "reimbursement" to mean compensation? A. To pay for his services. [466—360]

**Deposition of William A. Mahr, for Plaintiff.**

WILLIAM A. MAHR, called April 23, 1917, by the plaintiff, testified by deposition as follows:

Am a traveling salesman and reside at 307 Avenue C, Brooklyn, New York. Have lived in the vicinity of New York City forty years. Never lived in California. Was first there in November or December, 1916. In December, 1907, I resided in New York City and was a salesman employed by Nixon and Thickers, in the Knickerbocker Building. Had then met L. B. McMurtry. John B. Thickers introduced me to him. Had never owned and stock in the Empire Oil & Development Company or in any corporation in which McMurtry was interested.

(Deposition of William A. Mahr.)

At that time my duties took me where the clothing trade was, in different streets around Broadway, Fourth Avenue, University Place, etc., and was in the office of Nixon and Thickers every day. They dealt in wholesale woolens. I was not familiar in detail with the public land laws. I knew there were such lands that could be located, and in a general way knew that there were laws governing such locations.

Q. The records of Kern County, California, disclose that on December 19, 1907, William Mahn, or William Mahr, and a number of other people, appeared before George F. Handel, a commissioner of deeds of the City of New York, and executed a power of attorney. (Substance of Plaintiff's Exhibit No. 4 stated.) Are you the person who executed that document in the name of William Mahr, or William Mahn? A. I see the "M-a-h" and then my "r" when down there and they took it for granted the letter was an "n." Q. Since the execution of that instrument, has that difference arisen from time to time in the execution of documents?

A. It did on many of the documents, yes; in fact, I signed my name just identically in several [467—361] instances just the way I signed it at that time. Q. There is no question in your mind about you being the person who executed that instrument? A. Absolutely not. I signed that at the office in the presence of Thickers. No one else was present. Yes, I knew Mr. Handel. He was then an attorney for James, Schell & Elkus and his office was



(Deposition of William A. Mahr.)

down on Broadway, at least twenty blocks from our office. Don't remember that Handel was present when I signed that power of attorney nor do I recall going to Handel's office after signing it. Would not say whether he was or was not present. Have no way of telling.

Q. Who, besides Mr. Thickens, called on you personally, or was present when you executed the instrument? A. There was not anyone—of course it was taken—that power of attorney was taken in the office when everybody was in the office, don't you know, but at the particular time I signed there was nobody, that I remember, that was right around me who could see me sign it or hear the conversation.

Q. Do you remember whether or not anyone took your formal acknowledgment to it? A. That I cannot say.

Mr. Thickens asked me to sign the power of attorney, giving Mr. McMurtry power to locate lands for me, oil lands, in California. We had been talking about it day in and day out long before I ever signed it. No, I had never seen the document before I signed it. I believe I was then at my desk.

Q. And what was said at the particular time when the document was presented for your execution? A. Sign this power of attorney to locate lands for you in California.

No, I did not read it. Don't remember reading any portion of it. Never had talked to McMurtry about it. No did not [468—362] at that time know C. W. Thorn. I know all the boys in the

(Deposition of William A. Mahr.)

office that signed it, and think their names were on it when presented to me for signature. Yes, I knew Herbert M. Walker. He was employed in the office there, as was F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz, H. E. Bashore, Walter Wilson, and J. E. Farrell. Did not know R. B. Welch. Cannot say that I saw any of these others sign. Did not see McMurtry after I signed this, nor did I hear anything about any acts that had been done by him under it during the year 1908. The first I heard of anything having been done by McMurtry under this power was in 1910. McMurtry then came to the office. Don't remember having discussed with anyone this power between the date of signing and the date McMurtry came to the office in 1910, nor did I make any inquiries during that time with respect to what McMurtry had done under it. It was in August, 1910, that McMurtry came to the office. He wanted to get my ratification of the power of attorney and said it was necessary for him to dispose of part of the lands in order to carry on the work of the balance and in order to do that he would have to get my ratification to show that I was still alive, and that he, that I was a real live locator, as he put it, and that he was still my agent. I would not sign the ratification at first. There were four of us there in the office: Herbert M. Walker, Metz, Wilson and myself. Mr. Nixon, our boss, advised us to consult an attorney to see that the ratification was all right, and that the word "lawful" was inserted in my

(Deposition of William A. Mahr.)

ratification and in the other three, and I signed mine. Yes, I signed on advice of counsel I consulted, a man named Worthen, down with Elkus. Yes, in the same office with Handel. Yes, I advised Worthen about these matters and he saw the ratification. (Plaintiff's Exhibit [469—363] No. 45 read into the deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman except for the insertion of "lawful" as the 15th word from the end, and purported to have been executed by William A. Mahr, August —, 1910.)

(Plaintiff's Exhibit [470—364] No. 45, the same being a photographic copy, shown witness.)

Yes, that is a copy of my signature and I read the ratification before signing. No, I received no information from McMurtry or any other person as to the contents or purpose of that contract of August 4, 1910, other than what is stated in the ratification, nor did I make inquiry of McMurtry concerning it or know how many tracts of land had been located by McMurtry under my power, or make any inquiry as to that. No, I did not know the state of development of any lands that had been located in my name or make any inquiry upon that subject. Mr. Worthen and these other three whose names I have mentioned were present when I signed the ratification. I don't know Worthen's initials. I was introduced to him that day in our office. Did not receive anything of value at that time. Yes, I did afterwards, about a month later

(Deposition of William A. Mahr.)

from Mr. Searls. No, I did not know Searls at that time.

Q. I invite your attention now to a check in substance as follows:

“No. 114. New York, September 26, 1910.  
Second National Bank of the City of New  
York. Pay to the order of William Mahr, Two  
hundred and fifty dollars. (Signed) F. H.  
Searls.”

On the back thereof is the following in typewriting:

“Received from L. B. McMurtry, \$250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

And signed just below that typewriting which I have just read to you is the name, “William Mahr.” Is that your signature on [471—365] the back of that check (showing witness)? A. Yes, sir. About a month after signing this ratification Searls brought me that check. Don’t remember that the typewriting was on the back of the check when I signed it, or whether I read it. Reading this typewriting on the back of the check I have no recollection of its being there when I signed it. When he presented the check Searls said I have got \$250 that McMurtry promised you, and if you will endorse that check, why, I will introduce you to the

(Deposition of William A. Mahr.)

paying teller, and I will give you the money. McMurtry had said that that would be about what we would get out of part of the land that we would sell. He said that at the time he brought me this ratification. I signed this check at the Second National Bank where I met Searls. Thickens had requested me to see him there. Walker, Wilson and Metz were also there.

Q. Does not the fact that your name, William Mahr, appears directly underneath the typewriting, which is now on the back of that check, indicate to your mind that the typewriting was there at the time you signed it? A. There must have been something there or I would not have signed my name so low down, I am sure. Yes, my custom is to endorse a check near the end. I did not read it, and I don't remember reading it. No, there was no explanation made by anyone at that time as to any writing on the back of the check. Was with Searls at that time just long enough to get the cash. No, there was no conversation when I signed the check as to the source of the money. Mr. McMurtry said when the transaction was closed with the people he was going to sell a part of the land to, I would get \$250, or thereabouts. The next transaction was about a year later. [472—366] Mr. McMurtry called on me and said that he had formed the Pacific Oil Lands Company, in order to protect the locators' interest, and that he had 1000 shares of stock for me. Think that was in September, 1911. No, had no talk with anybody about these



(Deposition of William A. Mahr.)

California lands between the date of September 26, 1910, when I received the \$250, and the time McMurtry gave me the shares of stock, and received no advice at all about them or made any inquiry.

(Stock certificate No. 17 of the Pacific Oil Lands Company shown witness.)

Don't know whether that is the certificate given me by McMurtry or not or whether the receipt on the stub of certificate No. 17 bears my signature. (Certificate No. 17 exhibited to witness.) The signature resembles mine but I don't remember signing it. I received only one certificate of stock in this company. When he gave me this stock McMurtry said that he had organized this company to protect all the interests of the locators, and that the stock was worth a great deal more than the face value would indicate; that to put it away and not sell it to anyone. That conversation was in my office. All four of us boys, Metz, Wilson, Walker and myself were present. No, I was not advised at that time as to the number of locations made by McMurtry under my power of attorney or the area or extent of lands so located or the development of any lands so located. Yes, I then knew that contracts had been made but not what disposition had been made of the contracts. Knew that there was a million shares of stock issued by the Pacific Oil Lands Company but did not know to whom it was issued other than the locators, who got a thousand shares each. Did not know that McMurtry had any shares or Hoepfner. Made

(Deposition of William A. Mahr.)

no inquiry at that time of [473—367] McMurtry in regard to the number of locations or area of lands located or as to what had been done under the contract of August 4, 1910, or any supplemental contracts. Don't know that I made any such inquiry of any person at that time. I don't know just what the line of thought might have been; we may have talked it over, but what was said, I do not recollect; in a general way we may have talked it over, that we were to get stock, the boys around the office. Made no such inquiry of McMurtry or anyone connected with the Pacific Oil Lands Company or of Herrin and his associates or the Associated Oil Company. When McMurtry delivered this stock he was there long enough to give it to the four boys and to tell them about it and get out. No, don't recall that there was any conference or conversation. The next incident that occurred in connection with these oil land transactions was in 1912 and 1913, I received a notice of the meeting of the Board of Directors of this company. Received this first notice in about the summer of 1912. No, no information was given as to these lands. In the latter part of 1913 I received a notice and a proxy to sign so that the directors—the Board of Directors—could distribute a dividend which they had and which I signed and returned to them.

Yes, Plaintiff's Exhibit 46 is the proxy that I executed. (Said Exhibit No. 46, the same being

(Deposition of William A. Mahr.)

executed August 12, 1913, offered and read in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by Wm. A. Mahr, August 12, 1913.) [474—368]

(The substance of Plaintiff's Exhibit No. 40 stated to witness.)

Yes, that is about the substance of the communication I received with the proxy. The next transaction was about a month later when I received a dividend check for \$20. (Plaintiff's Exhibit 47, the same bearing date December 9, 1913, shown witness.) Yes, that bears my signature. Yes, it was shortly after I received that paper (Exhibit 47) that I received this \$20 dividend. (Said Exhibit 47 offered and read in evidence as follows:)

(This is a consent to dividends similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by William A. Mahr, December 3, 1913.) [475—369]

(Witness shown Plaintiff's Exhibit No. 32, a letter dated December 3d.)

Yes, I received a letter similar to this.

(Plaintiff's Exhibit No. 41, dated January 8, 1914, shown witness.)

Yes, I received a letter similar to that.

(Plaintiff's Exhibit No. 35 shown witness.)

Yes, I received a report which is probably the same

(Deposition of William A. Mahr.)

as that. Yes, I think I have these papers or copies and will produce them. The paper I now hand you is a copy which I had made of four typewritten sheets which I received. (Said paper offered in evidence as Government's Exhibit No. 48 purports to be a copy of Plaintiff's Exhibit No. 35.)

I finally surrendered my stock certificate No. 17 to Mr. Searls in the Spring of 1914. Mr. Searls called on me and said it was necessary to get all the stock into one hand, so that they could fight this thing successfully, as the Government was trying to reclaim the lands, and in order to do this successfully, it was necessary to get all the stock into one hand, in the hands of Mr. McMurtry. He said he would give me \$250, and I told him the amount was very small, inasmuch as when Mr. McMurtry gave me that stock he said it was worth a great deal more than the face would indicate, and not to sell it, and he told me the \$250 was all I would get, or anyone else, and that is all they could afford to pay for it. The whole thing didn't amount to much, and if I did not take that, I would get nothing. Yes, I signed an assignment on this certificate. The assignee's name was not written in when I signed it. No, after surrendering this certificate I never received anything more from the Pacific Oil Lands Company or on account of the lands located by McMurtry [476—370] under my power. When I surrendered that certificate the only information I had as to the resources and assets of the company was what was contained in the report

(Deposition of William A. Mahr.)

which I received. No, I did not then know how many locations which had been made in my name were affected by the contracts of August 4, 1910, and the subsequent ones growing out of it, or how many acres of land located in my name were affected by these contracts, only as shown in the report, and made no inquiry at that time of anyone concerning this. I began to inquire into it after Mr. Helm came to our office in September, 1916. He came in to find out if I had signed it, the power of attorney, and the different papers which he had, and wanted to know if I would come to San Francisco as a witness. I was under the impression that Mr. Helm was an agent of Mr. McMurtry's, and I had no other means to state whether he was or was not, and I did not feel as if I wanted to do anything for Mr. McMurtry in looking up the report; that he must have, according to the statement, sold the land for \$1,300,000, and that he had other moneys which he had received, and I figured the enormous amount that he got out of it, and we as his clients, and he as our agent, we should only get approximately, well, \$520. Mr. Helm asked me if I signed the different papers, and I told him yes, and he asked me to come to San Francisco as a witness and I told him I would let him know and that is about all that transpired. He showed me photographic copies of my signature to the ratification and one or two others. Don't know just what they were, I think, the ratification and the power of attorney. Yes, I went to San Francisco as a witness. No, was not put on the stand by the



(Deposition of William A. Mahr.)

defendants or interrogated on these transactions.  
[477—371]

Cross-examination.

The other signers of this power of attorney signed outside of my presence. Yes, I have met George F. Handel, the Notary Public, or Commissioner of Deeds. Had no business dealings with him, just social. No, I don't dispute his certificate to that power. If Mr. Handel's signature is there, I signed it before him. No, I don't dispute the acknowledgment. Yes, all the signers of this power of attorney on which my name appears, except Welch, had thus been employed in the office of Thickens and Nixon for several years and were on the best of terms.

Q. Had you, before the signing of the power of attorney, discussed or talked over with Walker or Romaine, Keenan or C. Rupert Walker, or Eugene Metz, or either or any of them, the fact that Thickens had talked to you or to them about signing the power of attorney, and taking a chance of making some money out of that, in California? A. Never talked that over. Q. Never did? A. No, sir. Q. Now, this power of attorney, have you read that today? A. Yes, sir. Q. You read the power of attorney, I don't mean the ratification. A. No, not the power of attorney. Q. Well, will you kindly read it now and see if it refreshes your memory at this time as to whether you read it or not, and knew the powers that you vested with Mr. McMurtry in locating lands, and to sell or contract for the same so as to develop and improve them? A. There was

(Deposition of William A. Mahr.)

no necessity of my reading that thoroughly because I had had many conversations with Mr. Thickens regarding the possibilities of the oil lands in California, and Mr. McMurtry's ability as a locator, and I was anxious to sign the power of attorney when I was approached, regarding it, because I wanted to naturally associate myself with [478—372] a company or organization that was going to try and develop and help locate these lands.

No, at or before the time of signing this power McMurtry had never said anything to me about the matter. No, Thickens had never said anything to the effect that he was asking me for the use of my name to take up lands for McMurtry, nor was there any suggestion or insinuation made to that effect by Thickens or any of the other signers of the power that McMurtry was to have any interest of any kind in the lands that were located. No, at the time I signed this power I had no intention of permitting McMurtry or anybody else to use my name for locating lands for themselves, nor did I intend to assist anybody in obtaining more mineral land than they were entitled to or to defraud the Government. No, I had no other intention than that McMurtry as my attorney should legitimately and honestly locate lands for me and my associates as could be legally and profitably located for me and in my name. Yes, Mr. Thickens said that if I executed this power and McMurtry did locate lands, a report of anything of importance would be made to me.

Q. Is it not a fact that Thickens also said to you

(Deposition of William A. Mahr.)

that if he, Mr. McMurtry, located lands in your name, and in the name of your associates out there, that he would attempt to there, as your attorney, finance the matter so as to do the assessment and development work without the necessity of calling upon you for funds. A. I do not recall him saying anything regarding that, Mr. Ach. He may have said it.

As to assessment work and expenditures, that was left entirely to Mr. McMurtry to work out. No, at the time I received my stock I did not know how many of the million shares had been issued. McMurtry said it was a close corporation, [479—373] formed to protect the locators' interest. The fact is that we all got 1,000 shares and we took it for granted if all of us were there and got 1,000 shares, that was what was coming to everybody else. No, I don't think that at the time I signed that ratification that McMurtry told me that the contract with Herrin had been transferred to the Pacific Oil Lands Company. Yes, I understood that whatever the locators had, had been transferred to the company. Yes, McMurtry told me that or to that effect that all the interests of the locators to be combined in the Pacific Oil Lands Company, or whatever the interests were, or would be in them. He said they would have to sell part of the land in order to work the balance. I judged that he was still working to develop. He said when he went back with the ratification he would receive some money and that my share would be about \$250 and the balance would go to make the 'and which he still retained. The reason I made no

(Deposition of William A. Mahr.)

inquiries of McMurtry, Thickens or anybody concerning this was I entrusted Mr. McMurtry as an agent, and he knew that business thoroughly and I knew when anything of importance came up that he would notify me. Thickens had told me that and when he came for the ratification he was notifying us that he was going to sell part of these lands, saying that he was notifying or would notify us as things developed. That is the way the thing impressed me. The only detailed report I received was with this \$20.00 dividend check. No, sir, I never modified or set aside this power of attorney. (Check No. 114 shown witness). I have no recollection of any explanation being made concerning any typing on the back of that check at the time I endorsed it. Yes, his other three associates, Wilson, Metz and Walker were all present at the bank when I signed that check and all signed similar checks. I don't remember of any [480—374] talk concerning the typing on the back of the checks. No, I would not say positively that Mr. Searls made any such explanation. I am sure I would have read that typing if I had noticed it. No, Mr. Searls didn't say anything about that writing. I am sure of that; nor did he mention it to any of the others in my presence. When McMurtry delivered me this stock in the Pacific Oil Lands Company he said that he had organized the Pacific Oil Lands Company to gather together lands so that the locators, and to form this company so as to protect the locators' interests in the property already located. He said it was solely

(Deposition of William A. Mahr.)

for the protection of the locators, and he was giving us 1,000 shares, and I took it for granted he was giving everybody else 1,000 shares. Yes, by "us" I mean the gentlemen who were connected with me. No, I never had a personal acquaintance with Francis S. Pratt, W. E. Christman or Hamlin E. Hatch. I knew Mark Hatch. Knew Walter Wilson and J. E. Farrell and knew they were locators. No, did not know Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, Frederick S. Thorn, Charles W. Gardiner, Harry B. Thorn, George W. Berry, George A. Neinecke, Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder, and F. H. Searls. First met Searls when I got the \$250 at the bank where I also met C. W. Thorn. Yes, I knew when I parted with my stock that if the Government took away the lands the payments under the contracts with the Associated Oil Company would stop and there would be no further obligation on the part of the Oil Company to make any more payments.

Q. And didn't you also understand from this report that all the located lands were included in the contract with the Associated Oil Company and that they were practically all of the [481—375] properties, with the exception of the property in San Benito County, which the Pacific Oil Lands Company owned or controlled? A. I was under the impression that all the lands from that report, all of the lands that the Associated Oil Company had bought over, was in that Pacific Oil Lands Com-



(Deposition of William A. Mahr.)

pany, or payments of same. Q. There was in this contract or in this report a notice that the contract of August 4th, 1910, was amended in August, 1913, and that new negotiations were consummated whereby the Associated Oil Company agreed to buy the 1440 acres and pay \$1,375,000 for them \$75,000 down and the balance in monthly installments of \$20,000 per month. Now, were you not advised when you received this report that the Associated Oil Company did pay \$75,000. A. No, sir? Q. Were you ever advised that the Associated Oil Company had paid \$20,000 a month after August, 1913, or any installment of \$20,000 provided for in the contract of August, 1913, as reported in this paper? A. None beyond the one that we got a \$20,000 dividend from. Yes, I had that report in my hands about two months when I parted with my stock in this company. When I got the report I read it over and thought it was a wonderful proposition, and that there was lots of money coming in there, and I had known Mr. McMurtry through Mr. Thickens for a long time; had been given to understand all the many charitable things he had done for Mr. Thickens and others, and that he was a man of wonderful character, a man of great ability, and an absolutely honorable man; and I had no reason to doubt that he was not acting in good faith with me, and I believe when he told me something, that he was telling me the absolute truth, and therefore I did not question him at all. Yes, it is true that what Searls said to me caused me to believe that

(Deposition of William A. Mahr.)

there was little chance of my [482—376] succeeding in holding these lands as against the Government, which I relied upon, and parted with the stock for \$250. No, I would not have signed the power of attorney if I had known McMurtry or any person acting for me intended to use my name to defraud the Government.

Redirect Examination.

Yes, Mr. Helm visited me in New York in September, 1916. No, no special agent of the General Land Office or any other branch of the Government visited me and interviewed me in September, 1916, with regard to these matters. Yes, a special agent called on me about April 23 or 24, 1914 and asked me about the proposition.

Q. In New York City on April 23d or April 24th, 1914, that you told Mr. J. McG. Williamson that you had signed the power of attorney in December, 1907, principally as a favor to John S. Thickers? A. No, sir. Q. Did you not also tell him in that conversation that you had received \$250 from Mr. McMurtry on account of these oil land transactions, and that you considered that \$250 more in the light of a gift from Mr. McMurtry, or a pickup? A. No, sir, positively not. Q. Didn't you also tell Mr. Williamson in that conversation that Mr. McMurtry had treated you royally in the transaction and that you were thoroughly satisfied at that time with the outcome of it? A. No, sir, I did not. Q. Did you not also tell Mr. Williamson in that conversation [483—377] that you had received the \$20.00 dividend in Janu-

(Deposition of William A. Mahr.)

ary, 1914? A. No, sir, I did not. Q. Did you not also tell Mr. Williamson in that conversation that you had received \$250 for your stock from Mr. Searls and that Mr. Searls was then in town and that he, Mr. Williamson, could interview Mr. Searls about the matter? A. No, sir. Q. And did you not also tell Mr. Williamson in that conversation that Mr. Searls was in the City of New York, stopping at the Knickerbocker Hotel, or in substance that? A. No, sir. Q. Is it not also a fact that in April, 1914, after Mr. Williamson's first visit to you, that you personally consulted with Mr. Harry Randall in regard to this matter? A. No, sir. Q. And after that you had consulted with Mr. Harry Randall, who was then acting as your attorney, Mr. Williamson came back to you and you would not talk to him further about the matter? A. I never saw him the second time. Q. Are you one of the plaintiffs in the suit of William A Mahr and others, against L. B. McMurtry and others, pending in the Superior Court of the State of California, in and for the City and County of San Francisco? A. Yes, sir. I don't know who furnished the information upon which the complaint was drawn. Believe it was secured from the records of the court. I gave him the facts just as I have given them here to you to-day.

(It is stipulated that a suit against McMurtry and others for an accounting in these transactions was pending at the time of the taking of this deposition.)

**Deposition of Joseph Edward Farrell, for Plaintiff.**

JOSEPH EDWARD FARRELL, called April 23, 1917, on behalf of plaintiff, testified by deposition as follows:

Am a woolen salesman and reside at 1548 President Street, Brooklyn. Am thirty-two years of age and have lived in Brooklyn all my life. In December, 1907, was in the employ of Nixon and Thickens at No. 79 Fifth Avenue. John B. Thickens was one of the partners in this firm. Was not then acquainted with L. B. McMurtry, F. H. Searls or C. W. Thorn, or any of the officers, or anyone connected with the Empire Oil & Development Company, and hold no stock in such company.

Q. The records of Kern County, California, disclose that there is therein recorded a power of attorney which was executed by J. E. Fannell, or J. E. Farrell, on the 19th day of December, 1907 (substance of Plaintiff's Exhibit No. 6 stated). Are you the F. E. Farell whose name appears on that instrument? A. Yes, I am. Signed it in the office of Nixon and Thickens in the presence of J. B. Thickens. Don't recall that Mr. Handel was present or that I appeared before a notary. The circumstances of signing that paper were Mr. Thickens said that his friend, Mr. McMurtry, was about to go to California—was in California at that time—and he asked me if I could give him my power of attorney to locate oil lands in California; he said it would be a good thing for me if it turned out to be all right. That is all that I recall and I don't recall any other

(Deposition of Joseph Edward Farrell.)

conversation prior to that conversation at the time of signing. Was then sitting at my desk. Don't recall anyone other than Thickers [485—379] being actually present. After signing we always talked it over in the office, you know; other matters would come up about the Empire Oil Lands, about the things and we often talked about the oil, and the prospects of getting something out of it some day. As to the Empire Company, I heard that they had formed this and got some of the fellows around the office to invest in it. To the best of my knowledge, the thing had not panned out right, and I think they failed shortly after that or about this time. In 1910 I learned that land had been located by McMurtry under this power. Mr. Thickers came to me and stated it would be necessary to ratify the original power of attorney; that they had a chance to sell some oil lands, some of the lands, and in order to hold what they had located it would be necessary to sell part of them, and the paper was presented to me.

(Plaintiff's Exhibit No, 49, a photographic copy of the ratification shown witness.)

Yes I should think that is a copy of the one I signed. That is my signature.

(Plaintiff's Exhibit No. 49 offered in evidence with this deposition and is as follow:)

(This is similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by J. E. Farrell, August 25, 1910.) [486—380]



(Deposition of Joseph Edward Farrell.)

When Thickens presented this paper (Exhibit 49) he stated that Mr. McMurtry—I think that he called him “Mack”—had a chance to dispose of some of the lands, and my signature would be necessary in order to ratify the original power of attorney, and that in order to hold all of the lands, why, they would have to sell part of them. Yes, he said there would be something coming later on. No, I did not then know how many locations had been made nor the area—not exactly. I knew under the homestead act each citizen would be entitled to a quarter section, but knew nothing about the mining laws or whether or not they were different from the homestead laws. No, I have never located any land under either law. No, I did not at that time seek any advice as to the number of locations that had been made or the area of land upon which my name had been used. Yes, I went before Notary Goetting when I signed Exhibit 49. Before signing I think I had gotten in touch with Mr. Mahr; I think they consulted with a lawyer to find out, to find out if it would be all right to sign that. No, made no inquiry as to the contract of August 4, with Herrin and others, for the reason that at that time we were separated from Nixon & Thickens, and Thickens came to me at that time—well, I had left his employ at that time and I was not on very good terms with Mr. Thickens, but I didn’t take it up with anybody else. No, I did not know from any source at that time what the contents and effect and purport of that contract was and did not in-

(Deposition of Joseph Edward Farrell.)

quire of anybody on the subject. No, nothing was said by Thickens as to the development of the lands being paid for out of the production from the land, not at that time—not at that time was anything said by him about the lands themselves being paid for out of production from the lands. After signing the ratification, the [487—381] next transaction was when C. W. Thorn came to my office and said that there was something coming to me from the sale of the lands and paid me \$250 in cash. He said that in order to save me a trip up to the bank, he had brought the cash with him, and if I would just endorse the check, he would hand the cash right over to me.

Q. I invite your attention to check No. 171, which is, in substance, as follows:

“No. 171. New York, September 11, 1911.  
Second National Bank of the City of New York.  
Pay to the order of J. E. Fannell”—that is the way it is spelled here, “F-a-n-n-e-l-l”—“Two hundred and fifty dollars. (Signed F. H. Searls.”

The reverse side of the check has the following typewriting:

“Received from L. B. McMurtry, \$250 in full payment for all my right title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

(Deposition of Joseph Edward Farrell.)

And immediately below it, the signature, "J. E. Farrell." I notice there you have separated the "r's" so that it cannot be confounded with Fannell? A. Yes, sir, that is the way I sign it now. Q. Is that your signature on the back of that check (showing)? A. Yes, sir. Q. Was the typewriting I have read upon the back of the check at the time you appended your signature to it? A. To the best of my knowledge it was not. Q. Did you look at the check before you signed it? A. Why, Mr. Thorn just said, "Just endorse this check." This is the substance of the conversation, "Just endorse this check. I have the cash with me, and [488—382] that will save you a trip up to the bank." Q. Does the fact that your signature appears down from the top of the edge of the check indicate to you that there was anything written or printed upon the check above where your signature was put at the time you put it there? A. I should say now, judging from that, that it was there. Q. That the typewriting was there? A. Judging now, yes, sir; but I cannot remember that it was there then.

No, I have no recollection of having read that typewriting on the back of this check, and reading the same does not now refresh my memory. I am not positive, of course, that it was not there, but I don't remember; I simply signed that endorsement and handed the check back to Thorn and he gave me \$250. No, never purchased stock on any other company. Mr. Thorn wanted me to invest in the Columbus Midway, and tried to impress upon

(Deposition of Joseph Edward Farrell.)

me how foolish I was that I didn't invest it. I understood that this \$250 was from the sale of part of the lands. No, Thorn said nothing about the condition of the lands or what disposition had been made of any of them or anything about the contracts and I made no inquiry of him on these subjects. He was there just *long for* me to sign the check and receive the money and talk about a few things in general. No, I made no inquiry of Thorn as to what development was going on nor did I know how many locations had been made or the area of lands covered, and made no inquiries of anyone. No, I made no such inquiries between the signing of this ratification on August 25, 1910, and the signing of this check on September 11, 1911—not to my knowledge, nor did I talk to anyone about it, only that we used to talk it over among ourselves. Don't recall during that time having asked Thickers anything about it, nor did I ask him about it at the time I signed the ratification. The next transaction that I recall was [489—383] we got a message that Mr. McMurtry wanted to see us at the Waldorf. That was just about the time, September, 1911. I then went to see McMurtry. I was introduced to him, and he said, he started in to tell about the hardships in locating these lands in California, and how they had to practically camp on the land, and with shotguns to keep off the claim jumpers, and he went into detail about this matter, and then he said that he had formed the Pacific Oil Lands Company just as a protection for all the fellows who had located,

(Deposition of Joseph Edward Farrell.)

and then he gave us 1,000 shares in the Pacific Oil Lands Company. Romaine and Keenan were there and I believe C. W. Thorn. That is the first time I met McMurtry. Didn't know Frank H. Searls at that time. No, I did not ask McMurtry how many locations had been made or the area or the development or anything about the contract of August 4, 1910, or any other contract. No, I did not know of any other contracts or the actual holdings of the Pacific Oil Lands Company. I believe at that time he told us not to dispose of the shares under any circumstances, as they would prove very valuable for us, and that at that time, they were worth about \$2.00 a share. Yes, he then gave me a certificate of stock. (Stock certificate No. 41 of the Pacific Oil Lands Company shown witness.) Yes, that is the certificate and that is my signature on the receipt on the stub for 1,000 shares, dated September 13, 1911.

Q. Does the date September 13, 1911, recall to you, or refresh your memory as to the date on which Mr. McMurtry gave you this certificate? A. Why, I know it was shortly after we received the money that we received the certificate. Shortly after I received this certificate from McMurtry we received a statement. (Plaintiff's Exhibit No. 51 shown [490—384] witness.) Yes, that is my proxy. (Plaintiff's Exhibit No. 40, dated August 4, 1913, shown witness.) Yes, I received a notice similar to that shortly after I received this proxy executed August 15, 1913. Thorn presented this



(Deposition of Joseph Edward Farrell.)

proxy for my signature to me at 215 Fourth Avenue. Don't recall what he said. I think we got in touch with the rest of the fellows, and, if I am not mistaken, they had taken it up, with an attorney, a friend of theirs; they had gone into the thing very thoroughly. I signed after consulting with them. By "the rest of the fellows," I mean, Mr. Mahr. No, I then made no further inquiries as to the number of locations, condition of the land or any contracts affecting the lands—not to my knowledge.

(Plaintiff's Exhibit No. 50 offered and read in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by J. E. Farrell, August 15, 1913.)

(Plaintiff's Exhibit No. 51 offered and read in evidence and is as follows:)

(This is a consent to dividends similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by J. E. Farrell, December 9, 1913.)

Yes, after I signed Exhibit No. 50 I received a "consent to distribution of dividends" and that was accompanied by a letter similar to the Plaintiff's Exhibit No. 32, dated December 3, 1913. After signing Plaintiff's Exhibit No. 51 I returned to California, and afterwards think I received \$20.00.

Q. I invite your attention to check No. 1201, which is in substance, as follows:

(Deposition of Joseph Edward Farrell.)

“No. 1201. San Francisco, 1/18/14. The Bank of California, [491—385] National Association, San Francisco. Pay to the order of J. E. Farrell, \$20.00. Pacific Oil Lands Co., F. E. Harrison, Secy. & Treas. L. B. McMurry, Vice-pres.”

Endorsed on the back of that check is the name of J. E. Farrell and Amy S. Farrell. Is that your signature (showing witness)? A. Yes, sir. Yes, that is the dividend check I received by mail with a letter similar to Plaintiff's Exhibit No. 41, dated January 8, 1914, and there was a statement with the letter similar to Plaintiff's Exhibit No. 35, which I read at the time of receipt. No, I had not, before receiving that statement, made any inquiry as to the assets or resources of this company nor did I know how many shares of stock had been issued or who the stockholders were, only Mr. Mahr, Mr. Herbert W. Walker, Mr. C. Rupert Walker, Mr. Romaine, Mr. Eugene Metz, Mr. William Keenan and Mr. Walter Wilson. Think that was all I knew personally. I knew each one had received 1,000 shares. No, did not know when I received this dividend check whether or not L. B. McMurry or E. A. Hoepfner were stockholders, nor did I afterward make any inquiry as to whether they were stockholders. In the conversation with Mr. McMurry at the Waldorf he gave us to understand that this was a mere matter of form, that it was done to protect our interests. No, I made no inquiry as to who were stockholders in the corporation or the

(Deposition of Joseph Edward Farrell.)

assets or resources, in my conversation with McMurtry. After receiving that \$20.00 dividend check in January, 1914, I was in Chicago when I received a telegram from Mr. Thickens, and I think about the same time a letter from Mr. Mahr, or a letter from Mr. Randall, stating that Mr. Thickens would call upon me at my office in Chicago—I was stopping there temporarily, stationed there temporarily. I have not that [492—386] telegram or letter. Don't know what happened to them. The telegram from Thickens read that he would stop off in Chicago on his way east, and he would like to see me at the Hotel Sherman, I believe it was. The letter from Mahr said: "All the fellows had disposed of their stock in New York and things looked very dubious, and I had better send for my stock and dispose of it, too." Did not see Thickens in Chicago. Missed him. Later I received letters and finally a wire from Mr. Thickens when he arrived in New York, stating that Mr. Searls would be on his way west in a few days and if I cared to dispose of my stock, why he would gladly stop off, or in fact, have a talk with me. That was about March, 1914. Yes, Thickens called at my office in Chicago and we went over to a hotel. That was just before Easter, 1914. Searls said that the Government was about to start suit to recall the lands, and, from all appearances, it looks as if we were going to lose out, lose all our interest in the matter, but he thought that "Mack" wanted to see, or wanted to get something out of it, and that if we would just sign the

(Deposition of Joseph Edward Farrell.)

certificate he would hand us over \$250. No, I did not accept the proposition. Mr. Searls said I was very foolish to look at the matter in that light. Not to dispose of the stock, as I probably would not get anything out of it, and I told him that I thought I was going to consult with my wife, and that I would write her in detail all about the situation, and I believe he called at my home in Brooklyn.

The certificate was in Brooklyn, while I was in Chicago [493—387] after that interview. In about April or May, 1914, after I returned to New York, I was interviewed by Thickens and Mahr. Was also interviewed by Mr. Randall who was, I believe, attorney for the Pacific Oil Lands Company in New York. Mr. Thickens said all the rest of the fellows had disposed of it, and for us to believe what he had to say about the situation, and the best I would get out of the whole matter as a codefendant, and my share of the whole thing, would be part of the litigation, the cost of the litigation. He said the Government would bring suit to recall the lands. Mr. Mahr said I was awfully foolish not to dispose of it, and gave about the same reason. Randall said about the same thing. I then wrote McMurtry that I didn't care to dispose of my stock; that if there was going to be a fight, I would fight alongside with them, and that I wanted my share of whatever was coming to me. I received a letter in reply. I have not this letter. He said that he would be very glad to know that I was not going to dispose of my stock, and if at any time that I wished to dis-

(Deposition of Joseph Edward Farrell.)

pose of it, why, to communicate with him. That was along about June or July, 1914. In reply I received a check for \$100.00 accompanied by a type-written form saying that my share of the moneys disposed of was \$100. Think Mr. Humphreys, my attorney in San Francisco, has all of this correspondence. About a month later I received a check for \$40.00. Then pretty near every month I received a check for either \$15 or \$20, up to about two months ago. Yes, the assignment of two shares of this stock to William Penn Humphreys, dated January 8, 1917, on the back of Exhibit No. 41 bears my signature, and I received a new certificate for the remaining 998 shares which I still have. Yes, I was in San Francisco last fall, when Mr. Helm called at my office at No. 257 Fourth Avenue and stated [494—388] I would be needed as a witness, and asked me if I would go, and I said I would, and did.

Cross-examination.

Yes, at the time I signed this ratification I knew lands had been located in my name in California by McMurtry, and that he had made contracts to sell some of the locations and that it was necessary in order to develop the remainder of the locations in order to preserve them for the locators. We locators in Nixon & Thickens' office talked that over pretty generally at the time and Mahr said, after consulting an attorney, that we should sign. I think something was said about it, about if it was legal. I think the idea was to guard our interest. Yes, to



(Deposition of Joseph Edward Farrell.)

the best of my knowledge I read that power of attorney before signing, and of the signers I knew Francis E. Pratt, J. C. Thickens, and Walter Wilson. No, nothing was then said by Thickens or anybody else to the effect that if any lands were located McMurtry was to have an interest in them nor was there any such understanding, nor was there any agreement or assurance that I would never be called upon to put up any assessment work money for development of the lands, nor did I ever modify or withdraw that power of attorney. No, I would not testify that the Notary Handel was not present and acknowledged that power. Yes, at the meeting with McMurtry at the Waldorf Hotel, he spoke of having had to hire others to aid and assist in preserving these lands and said it was practically a desert, sort of a hell-hole. Cannot recall that he mentioned that he had made a contract with a man by the name of McLeod, to spend money, and also with the Associated Oil Company to spend money on these lands for the purpose of getting oil, nor did he mention at that time that he had transferred contracts to the [495—389] Oil Lands Company, or that he had transferred the lands which had been located to the Oil Lands Company. My understanding was that the Oil Lands Company was formed in order to group our interests, that there was trouble brewing, and in order to group our interests in that way, he would be better able to fight it. Cannot say positively that he referred to trouble brewing with the Government at that time. I believe at that time I had read

(Deposition of Joseph Edward Farrell.)

numerous cases, if I am not mistaken, where the Government was suing the Southern Pacific. Yes, I had also heard about the withdrawing of lands by the Government. Yes, that was the character of litigation that I had in mind at that time. He said that this company was formed to group our interests and protect our interests and from that we would gather that in doing so we would make it as a unit, and would be able to fight then whatever would come up. Yes, I believe he did say that he wanted all those who had helped or in any connected with locating the lands, to benefit by it. Yes, I should say that that it was the general impression that the corporation was formed to protect the interest of the locators all the way through, and to pay the men who had helped, without paying them money. When I signed this check at the time time Thorn gave me \$250 I knew, at least I was positive, that it did not take away my interest in these located lands. I signed that check merely as an endorsement, and when I did sign the check I did not feel at the time that I was forfeiting any of my rights or interests in the lands located for me. I do not believe the back of the check was discussed, but I just merely endorsed it in order to receive the money from Mr. Thorn. I did not understand that I was transferring to McMurtry my interest in the located lands. We were just told that there would be more moneys coming to us. From my conversation with [496—390] Thickens at the time of signing the power, I gathered that if anything of interest developed, we

(Deposition of Joseph Edward Farrell.)

would receive reports from time to time. No, at the time McMurtry spoke to me about protecting the locators and paying with stock the men who had done the work on the lands, he did not state or intimate as to how he was going to be paid for his services; nor did he say all the locators were receiving the same proportion of stock, or speak about Major Hoepfner having worked on the lands or being in with him operating and protecting the lands for the locators. No, McMurtry never at any time spoke to me about the subject of his compensation, nor did McMurtry in his letters to me at any time advise me of the amount of stock he had in the corporation or what he had done with it, and I never asked him, nor did he advise me of the amount of stock that Hoepfner, Harrison or Kay had or what that had done with their stock, nor did Thickens ever tell me anything about that. No, at the time of signing this power, or any time thereafter, did I have any intention of permitting McMurtry or any other person to use my name for the purpose of acquiring lands for their benefit or advantage. I signed the power to be a legitimate locator. No, I have never received any information from anyone that my name had been used or the power of attorney that had been given to McMurtry had been used for the purpose of making illegitimate or dummy or dishonest locations upon lands in California. [497

**Deposition of Walter B. Wilson, for Plaintiff.**

WALTER B. WILSON, called April 24, 1917, by plaintiff, testified by deposition as follows:

Am a salesman for Nixon, Walker & Tracy and reside at 1520 St. Nicholas Avenue, New York. In December, 1907, was bookkeeper for Nixon & Thickens at 79 Fifth Avenue, and knew John B. Thickens, who was a member of the firm, and H. E. Bashore, who was manager. Have always lived in New York State, and prior to 1907, was never interested in acquiring title to any public lands and had no familiarity with the public land laws relating to the disposition of mineral or oil lands. First met L. B. McMurtry in 1910. Did not know F. H. Searls or C. W. Thorn in 1907. Had heard of the Empire Oil & Development Company but was not a stockholder.

Q. The records of Kern County, California disclose there is therein recorded a power of attorney. (Substance of Plaintiff's Exhibit No. 6 stated.) Are you the Walter Wilson whose name appears on that instrument? A. Yes, sir.

Signed that in the office of Nixon & Thickens in the presence of Thickens. I knew George F. Handel, the Commissioner of Deeds at that time. Cannot remember him being present or going to him and acknowledging that instrument. His office was on Pine Street. Did not go to his office. Thickens presented this power to me for my signature. No, its execution had not been a subject of conversation between myself and Thickens prior to that time.

(Deposition of Walter B. Wilson.)

He then asked me if I was twenty-one and if I would sign this power of attorney, giving a friend of his the right to locate lands in my name in California oil lands, and he told me that he thought it would be worth something to me some [498—392] day, and so I signed it. No, there was no other explanation that preceded this and I had no talk with any other person with regard to signing it. Don't know what Thickers did with it. Did not know these other signers, Francis E. Pratt, J. C. Thickers, William F. Chrisman, Mark W. Hatch, Hamlin E. Hatch, or T. R. Bailey. Knew J. E. Farrell. None of these were present when I signed; nor was Herbert M. Walker, H. E. Bashore, R. B. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, or Eugene Metz. Yes, William Mahr was present. Of those mentioned I knew Herbert M. Walker, Bashore and C. Rupert Walker. After executing this power I heard nothing more of this matter until 1910. Don't remember talking with anybody about it during that time. In about August, 1910, McMurtry came to the office with Thickers who introduced him to me. (Plaintiff's Exhibit No. 52, being a photographic copy of the ratification shown witness.) I signed that paper. McMurtry presented it to me. Said he had located lands in California for me and that they were quite large, and he did not have the capital with which to work them, all these oil lands, and he said he would be compelled to sell half of them to get money enough to work the rest, and that he would give me \$250 as my share



(Deposition of Walter B. Wilson.)

as part of the sales price, and that is all he could give. No, I did not sign it immediately. Mr. Walker, Mr. Metz, Mr. Mahr, and myself, we thought we would have a lawyer look it over and see if everything was all right in it, and we did not want to sign it unless it was. Then, after inserting the word "lawful" between the words "acts" and "made," signed it. Yes, I then read it. Made no inquiry of McMurtry with regard to the contents or purport of this contract of August 4, 1910. Cannot remember whether McMurtry told us as to the number of claims located. Have an idea he said something about how much [499—393] land was located in our names. Received no money at that time. Think John B. Thickers took the ratification. About three or four weeks later Thickers called upon the phone and told us to come up to the Second National Bank, Walker, Metz, Mahr and myself, and there met Searls and C. W. Thorn.

Q. I now invite your attention to a check which is, in substance, as follows:

"No. 115. New York, September 26, 1910.  
Second National Bank of the City of New  
York. Pay to the order of Walter Wilson,  
Two hundred and fifty dollars. (Signed) F. H.  
Searls."

On the back thereof, in typewriting, is the following:

"Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. Mc-

(Deposition of Walter B. Wilson.)

Murtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

And just below that is the name of "Walter Wilson" signed. Is that your signature to that? A. Yes, sir. Cannot remember whether the typewriting was on the back when I signed. Reading it I still cannot remember its being there. I just signed my name. Mr. Searls handed me the check and I signed it quick, that is all, as he wanted to get away. He said if there was any more coming we would get our share. Cannot say that I was advised as to the source of this money or the funds that were being distributed. Not at that time. Understood it was coming from McMurtry as part of the price of the sale of the lands that he sold. Got that understanding when I first met McMurtry. Did not know what lands. Did not ask Searls or McMurtry what lands had been disposed of. No, at that time [500—394] did not know anything about what had been done under the contract of August 4, 1910. After I signed the check handed it to Searls and he took it to the cashier and gave me the money. No, I didn't know anything about how these lands were going to be paid for and made no inquiry. No, at the time of signing this check no explanation was made of any typewriting on the back. Yes, the fact that my name is some distance from the top of the check would indicate to my mind that there was something written on the check above my signature.

(Deposition of Walter B. Wilson.)

The next I heard of this matter was in 1911. Mr. McMurtry came to our office and said he had formed a company called the Pacific Oil Lands Company, to protect the locators, and, as our share, he was giving each one 1,000 shares of stock. I was then employed by Porter & Wilson, 45 East 17th street. The only conversations I had concerning this matter between the time I signed the check and this visit were just talking among ourselves, Metz, Mahr, and Walker. When McMurtry came to see me in 1911, he said he had formed the company to protect the locators and that the stock was valuable and most likely in a year it would be worth double, and not to sell it. Don't remember that anything was said as to the resources or assets of the company. Believe McMurtry told how much land had been located, but don't recall how much. (Certificate No. 40, of Pacific Oil Lands Company stock shown witness.) That looks like the certificate that I had, and the receipt attached to the stub dated September 14, 1911, bears my signature, and that was about the date I received it. I then did not hear anything more of this until about 1913, and I had a letter from him, or a notice of a stockholders' meeting. (Plaintiff's Exhibit No. 40, a letter dated August 4, 1913, shown witness.) That looks like the same letter I got about three or four months [501—395] later we got letters, giving our proportion for the distribution of dividends. (Plaintiff's Exhibits Nos. 52 and 53 offered in evidence and are as follows:)

(Deposition of Walter B. Wilson.)

(Exhibit 52 is a ratification, and Exhibit 53 a proxy, similar in form to Plaintiff's Exhibits 1 and 5, respectively, with the deposition of Frank B. Chapman, except the insertion in Exhibit 52 of "lawful" as the 15th word from the end.)

(Plaintiff's Exhibit No. 53, proxy dated August 12, 1913, shown witness.)

Exhibit No. 53 bears my signature and I remember having executed it. Know at the time I executed Exhibit No. 53 there was no information given me by anyone as to the amount and quantity of lands that had been located or what disposition had been made of them or how the title or right of possession to them stood, and don't think I made any inquiry along those lines.

(Plaintiff's Exhibit No. 54 shown witness.)

Yes, that is the consent I signed in 1913. (Plaintiff's Exhibit No. 32, dated December 3, 1913, stated to witness.) Yes, a similar letter accompanied this consent that we signed and mailed back to San Francisco—Mahr, Metz, Walker and myself.

(Plaintiff's Exhibit No. 54 offered and read into evidence and is as follows:)

(This is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.)

Later I received \$20 by mail.

Q. I invite your attention to a check dated "San Francisco 1/8/14. No. 1200. Bank of California, National Association, San Francisco. Pay to the order of Walter Wilson, twenty dollars." and signed "Pacific Oil Lands Co., F. E. Harrison, Secy.-

(Deposition of Walter B. Wilson.)

'Treas.," also L. B. McMurtry, Vice-Pres.'" Endorsed on the back are the names, "Walter Wilson," first endorsement; [502—396] "Geo. W. Plant," second endorsement, and the third endorsement is that of "Frederick Blaser." Is that the dividend check that you received in January, 1914?

A. Yes, sir.

(Plaintiff's Exhibit No. 41 shown witness.)

Yes, I received a similar letter with this check and a statement of the affairs of the company. Yes, it looked like Plaintiff's Exhibit No. 35. Yes, I read this report to stockholders at the time of its receipt. The next thing I heard of these transactions was in March, 1914. Mr. Searls came to the office and said that the Government was suing to get these lands back, and Mr. McMurtry wanted to take in all the stock so that he could now take up this case himself; that he did not want to bring all the stockholders into it, and he was buying up the stock. Yes, that is my signature under the assignment dated March 18, 1914, on certificate No. 40. I then received from Searls \$250 in cash. At the time I delivered up that certificate I had an idea it was 160 acres that had been located under my power of attorney; that is what we talked about in the office, Mr. McMurtry, and Mr. Metz and myself. At the time I assigned that certificate the only thing I knew about the disposition of the lands was from reading the report. Made no further inquiry at that time about the condition of the lands or by whom they were held. Received no other money after sur-



(Deposition of Walter B. Wilson.)

rendering the stock to Mr. Searls. In about September, 1916, Mr. Helm came into the office with Mr. Thickers and said he represented people that purchased the lands and wanted to know if I would go to California as a witness, which I did in November. Was in San Francisco about three weeks, but was not called as a witness in any litigation. No, at the time I surrendered this Certificate No. 40 in March, 1914, I did not know what the assets or resources of the Pacific Oil Lands Company were, [503—397] and made no inquiries at any time as to who the stockholders were or what number of shares each held.

Cross-examination.

No, I don't remember that Handel took my acknowledgment. What I said as to what Thickers said at the time of my signing the power of attorney is as near as I can remember what he said. Yes, he gave me to understand that McMurtry knew a lot about those oil lands in California belonging to the Government and that he was going to California to look over the land, and that if they looked like good oil lands, to locate in my name, and that I might make some money through that process. No, Thickers did not ask me to let McMurtry locate lands for his benefit in my name. Yes, I think there was something said at the time about the other boys signing it. No, there was no arrangement made with him and no understanding that he was to locate lands for himself. He was to locate lands for me to my advantage. That is what I thought

(Deposition of Walter B. Wilson.)

I was signing for. Yes, I saw Thickens produce the power of attorney. That is what he told me as near as I can remember. Yes, I read it over at the time. No, I did not intend that it should be used for the purpose of illegitimately acquiring any lands from the Government for myself or anybody else and no statement of that kind was made by McMurtry or Thickens or anybody. No, I never recalled, revoked or modified that power. No, at that time I signed the ratification nothing was said about the power having been intended not for the use of myself but simply for the benefit of McMurtry. As I understood what Thickens said when he asked me to sign the power, I was doing it for my advantage: I did not think it was just for Mr. McMurtry. Yes, that is as I understood it. Yes, I had this ratification in my possession several days before signing maybe three or four days [504—398] maybe a week. We had the attorney Worthen come to see us all together at Porter & Wilson's, No. 45 East 17th street. I talked with Walker, Metz and Mahr about it and I think I met Keenan and Farrell while I had it and talked with them. Yes, I knew at that time that this power of attorney had been recorded in Kern County, California, and we talked this fact over. No, there was no question then presented as to how much of the lands that were located in my name belonged to McMurtry. No, McMurtry made no statement to me that the lands he located in my name belonged to him, or that he owned any interest in them. Yes,

(Deposition of Walter B. Wilson.)

he did say that he was getting this ratification because he had made some contract, in order to save some of the lands, to give up some of the land and get money to protect the others and that the purpose of this ratification was to convince the people with whom he made this contract that he had a valid power of attorney and that the people who gave it were still alive and had not revoked it. Yes, I understood at that time that this ratification ratified the contracts made in my name by McMurtry, with Herrin and other people dated August 4, and all contracts, deeds and conveyances of and concerning contracts of sale of these lands. No, neither I nor Metz, Walker, Keenan or Farrell, so far as I knew, up to the time Mr. McMurtry asked for the ratifications, had put up any money in this thing. In consulting a lawyer, we just wanted to see whether it was legal or not. We didn't know whether it was legal. We didn't know whether it would hurt us or not in signing. Yes, I mean financially. Yes, I knew from McMurtry's statement then that there was some money coming to us and that in order to take care of the lands he would have to give up one-half to develop the other half. We never knew how much it was worth, but thought there might be quite a little [505—399] in it for us. Yes, we thought it would be a great deal more than \$250. Do not know that McMurtry said anything about having assessment work done. He said they had to look out that they did not jump the land and that they had had a lot of trouble. From what Mr. Thicken

(Deposition of Walter B. Wilson.)

said, we always trusted Mr. McMurtry, and we thought he was a very honorable man, and he said he was the squarest man in California, and that is what we always believed. Yes, when he brought the ratification we regarded that as a demonstration that he was on the level and square. Yes, he said he would let us know if there was anything further coming to us. I was twenty-three years of age in 1910. Yes, when we went to meet Thickers at the bank we went with the expectation of receiving the \$250. McMurtry had told us when we signed the ratification that \$250 was all he could give us. I did not know where this money was coming from but that is what he was going to give us. He said that before the ratification was signed. No, I did not understand that he was paying this himself. Yes, at the time we received this stock we understood that oil had been struck upon some of the located lands and that is what I thought the stock represented. I got that idea from something that was said at the time. Yes, at the time I received this report in 1914, I read it over and talked it over with Mahr, Metz, Walker, Keenan, Farrell and Bashore. Yes, I received the report before I sold my stock. We all talked it over before we sold this stock outside of the presence of Searls. Yes, Searls mentioned that there was serious litigation contemplated by the Government concerning the lands located in our names, and this part of the report reading: That is, if the Government shall take away the land sold, the payments under the contract stop

(Deposition of Walter B. Wilson.)

from the date of such taking away, and there is no further [506—400] obligation on the part of the Associated Oil Company, to make any more payments, was underscored. Yes, we agreed among ourselves that we had better take the \$250 and get out of litigation, and I believe Searls came in next day and we told him.

Q. Did Searls say anything to you at that time that even if you gave up this stock, there might be still something further coming from it? A. That is what we always thought. Something must have been said at that time to that effect. No, prior to the giving of the power of attorney or any time since then, I never intended that the power should be used in any way to deceive or defraud the Government or anybody nor did I intend by ratifying the contract to aid McMurtry in getting money illegitimately from other people, or to permit him to cheat or defraud other people in the handling of these lands, or make any misrepresentations. No, I never intended to be a dummy locator nor did anyone ever ask me to be, nor did I at any time intend that McMurtry should have any ownership or interest in any of the lands that might be located in my name, nor was there anything said between myself and McMurtry or Thickens as to any compensation that McMurtry was to have should the lands prove profitable. That matter was not broached.

Redirect Examination.

I was born October 8, 1886. No, I was never asked to advance any money or pay any money to be



(Deposition of Frank H. Romaine, Jr.)  
expended in the development of oil upon any of  
these lands. [507—401]

**Deposition of Frank H. Romaine, Jr., for Plaintiff.**

FRANK H. ROMAINE, Jr., called April 24, 1917,  
on behalf of plaintiff, testified by deposition as fol-  
lows:

Am employed by Samuel Hird & Sons, wholesale  
woolens, No. 257 Fourth Avenue, Reside at No. 118  
West 72nd street, New York City. Have always re-  
sided in the State of New York, except for a short  
time in New Jersey. In December, 1907, was em-  
ployed by Nixon & Thickens, wholesale woollens, 79  
Fifth Avenue, as a salesman. Had never taken up  
any of the public domain and the only information  
I had concerning the requirements and privileges  
under the mining laws was that Mr. Thickens ex-  
plained to me the power of attorney that I signed,  
and what I was signing. (Substance of plaintiff's  
Exhibit No. 4 stated.) Yes, am the F. H. Romaine,  
Jr., who signed that instrument. In the first place,  
I got into this oil idea through Mr. Thickens, who  
was a personal friend of Mr. McMurtry's and they  
came to me some time before this power of attorney  
was signed and asked me if I would take stock in  
this Empire Oil & Development Company—I believe  
that was the name, to the best of my recollection at  
this time—in any event, the name was the Empire  
Oil Company, and I took 400 shares of stock in this  
company and it was from that that it led into this  
eventually, the Pacific Oil Lands Company. When

(Deposition of Frank H. Romaine, Jr.)

I say "they came" to me, I mean Thickens came to me representing McMurtry. I bought these 400 shares of the Empire Company, paying fifty cents a share, less ten per cent off for cash, about a year and a half before. Did not know McMurtry at the time I signed that power. Thickens brought it to me and explained it, and explained the usage of selling California oil lands at that time, and he said there was no question but what the transaction was [508—402] clean, above the table, and all that, and of course he was one of my employers and naturally I thought that there could not be anything outside of what he said, and besides that, it was the way that lands were being located in California at that time, according to the laws of California, so I signed the power of attorney right then, after he had explained it to me. There had been several conversations prior to the time I signed it, such as the one made the day I signed it. Don't recall anyone else being present but Thickens and myself. Don't recall whether the Commissioner of Deeds Handel was there or not. Didn't know him personally. Knew he was a member of the firm of James, Schell & Elkus, because the senior member of our firm was a brother-in-law of a member of that firm. I signed it in the office of Nixon & Thickens; that I know. Did not go to Handel's office. After signing we talked about it practically right along, for the simple reason that Mr. Thickens stated that he expected on account of having invested in the Empire Company that he would like to see me in it and was almost sure that

(Deposition of Frank H. Romaine, Jr.)

I would get more out of this than I put in the other. The first distinct information that McMurtry, acting under this power, had located more land was, I think, at the time we were asked for the ratification. That was in about September, 1910. Thickens told me. (Plaintiff's Exhibit No. 55, a photographic copy of the ratification dated August 22, 1910, shown witness.) Yes, that is the ratification I signed. Thickens presented it to me. Did not see McMurtry at that time. I read it over before signing, but made no inquiry of Thickens as to what lands had been located or the quantity, except this, that I was told that a man could not locate more than I believe, the expression was, a quarter section. Thickens told me that at the time of [509—403] the signing of this ratification.

Q. Well, were you given the impression at that time that your name had been used only on one quarter section of land? A. No, it was not used any way in that land; it was just simply used as a locator of lands; they did not mention any sections, because we only knew it was in Kern County; we didn't know the address or the section, or what they went by, and I don't know yet. Q. What I am getting at is, what did you understand at the time, or was it your understanding at that time that your name could only be used on one quarter section of land? A. No, there was no understanding of that kind.

Yes, I read that ratification at the time, but made no inquiry about the contract of August 4, 1910. Don't think Thickens said anything about that con-

(Deposition of Frank H. Romaine, Jr.)

tract or anything except to reiterate what he at first told me, that it was absolutely all right to sign it. (Plaintiff's Exhibit No. 55 offered in evidence and is as follows:)

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and is dated August 22, 1910.)

No, I was not then paid or promised anything. The next deal in regard to these oil land matters was about September, 1910, we were paid \$250 in cash by Mr. Searls and I believe Mr. Thorn was with me at the time at my place of business. Yes, that was September 11, 1911, instead of 1910.

Q. I invite your attention to a check which is, in substance, as follows:

"No. 164. New York, September 11th, 1911.  
Second National Bank of the City of New York.  
Pay to the order of F. H. Romaine, Jr., \$250.  
(Signed) F. H. Searls." [510—404]

On the back of that check we find the following in typewriting:

"Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

And immediately below that is the name of "F. H. Romaine, Jr." Is that your signature (showing witness)? A. That is my signature.

(Deposition of Frank H. Romaine, Jr.)

I have no recollection absolutely of that thing on the check that I ever signed,—typewritten. It was in my possession only while I was signing. Searls was there only five or ten minutes. He simply said to the effect that the dividend was being paid and he only brought me the cash so as to save me the trouble of going to the bank, and he gave me the cash for the check. My signature seems closer to the typewriting than I ever sign anything. No, I am not positive that the typewriting was not there, but I don't recall seeing that before. Searls said this \$250 was from the sale of part of these lands. No, I made no inquiry of him as to the number of locations or the area, but I was told—Mr. Thickens told me, probably from what he had heard from Mr. McMurry. He told me about that time. [511—405]

At the time Thickens gave me the ratification to sign he said there was practically twenty-eight hundred and some odd acres in Kern County, and some hundred acres in San Benito County. The nearest I can recall is about 110 acres, because it was one-thirty-second of twenty-eight hundred and some odd. That would be one-thirty-second, and that would be 180—must have been six hundred, and then in San Benito County 2010. That would figure right. Yes, that was the quantity of land affected by my location. I think that was what he said, as I previously told you, as a quarter-section. I only knew that this 2880 was in Kern County and to the best of my recollection about 800 acres in San Benito.

No, at the time I received this check, September



(Deposition of Frank H. Romaine, Jr.)

11, 1911, nothing was said about this contract with W. F. Herrin and others, and I made no inquiry of Searls or anybody except in a general way, just discussed the proposition broadly. No, I would not say that I did at that time make any inquiry about this Herrin contract of August 4, 1910. I think it was in 1911 that I received the stock in the Pacific Oil Lands Company. That was at the Waldorf Astoria Hotel, where I had gone to see McMurtry, and he, Searls, Thorn and several others were there. (Certificate No. 13 of this Company shown witness.) Yes, that is the certificate I received and the receipt on the stub, dated September 13, 1911, bears my signature. McMurtry handed it to me and said, "Be very careful and put it in the safe, put it in some safe place, because it is going to be very valuable." No, I did not then learn the resources and assets of the Company, or whether or not contracts had been made with W. F. Herrin and others had been transferred to the Company or the number of locations made in my name, only in the indefinite way that I have told you previously. Didn't have an [512—406] opportunity to inquire about anything because they were in a hurry. No, I made no inquiries because I was told we were going to have a statement shortly. Yes, I understood that Mr. McMurtry was a stockholder in almost all of it, the man that was at the head of it in every way, shape and manner, and naturally I presumed that he was not only a stockholder, but the big one.

Never met Major Hoeppner and did not observe

(Deposition of Frank H. Romaine, Jr.)

from my certificate that E. A. Hoeppepner was president and made no inquiry as to him or what interest he had in the company.

Between the time I received this stock and the time I executed a proxy in 1913 the five or six of us there in the office who were interested talked over the matter constantly. (Plaintiff's Exhibit 56 shown witness.) Yes, that is the proxy mentioned and bears my signature. Thorn brought it to me there in the office and I think Thickens was with him. (Plaintiff's Exhibit 40 with the deposition of S. H. Freeman shown witness.) I think that letter is similar to letter that came with the proxy. Thickens said he would like to have McMurtry vote my stock. (Government Exhibit 56 read in evidence. This is a proxy similiar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been extended by F. H. Romaine, Jr., December 9, 1913.)

After signing the proxy I received a dividend check for \$20.00 and a statement of the affairs of the company.

(Plaintiff's Exhibit 57 read into deposition. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by F. H. Romaine, Jr., December 9, 1913.)

That (Exhibit 57) bears my signature. Yes, I received a letter with that similar to the letter shown me, dated *er* 3, 1913 (Plaintiff's Exhibit 32 with the deposition of *y* B. Thorn.) [513—407]

(Deposition of Frank H. Romaine, Jr.)

Q. I invite your attention to a check in substance as follows:

“No. 1179. San Francisco, 1/8/14. The Bank of California National Association, San Francisco. Pay to the order of F. H. Romaine, Jr., Twenty dollars. (signed) Pacific Oil Lands Co., F. E. Harrison, Secy.-Treas. L. B. McMurtry, Vice-Pres.”

On the back of that check is your endorsement, “F. H. Romaine, Jr.” Is that your signature to that (showing witness)? A. Yes, sir. [514—408]

Didn't read this report to stockholders (Exhibit 35) very carefully, though I remember receiving it. The next thing I recall was when Searls came and bought my stock for \$250.00. That was about December, 1914, I think. Cannot say definitely whether it was March or April, 1914, or not. Searls told me that the Company was not in good shape, and they were either going to sell out or somebody was going to buy the stock of the Company, and this was to be what I was to get from them. At that time Searls asked me for my certificate of stock in the Empire Company, saying at the time that as soon as Mr. McMurtry had straightened out some things regarding that, he was going to reimburse all the holders in the Empire Company for the investments which were made at that time. Yes, I delivered the Empire stock to Searls. No, have not received anything for it yet. The assignment on Certificate No. 13 bears my signature, which was put there when I surrendered it. No, I did not then

(Deposition of Frank H. Romaine, Jr.)

know definitely how many locations had been made in my name or the area of land located, only as I explained before, approximately 110 acres. Did not know what the assets or resources of the Pacific Company were at the time I surrendered this certificate. All I knew about the contracts with the Associated Company was what I learned from the statement. No, didn't know who the stockholders of the Pacific Company were. Believe Hoeppner was mentioned in that statement. Didn't know how many shares he or McMurtry held. Knew all the boys in the office had got the same number. This Certificate No. 13 was the only stock in this company I received. No, made no inquiry at the time I received this certificate as to the resources or assets of the Company or the contracts with the Associated Oil Company or the state of development of the [515—409] lands or area of lands. Have received no other money from this Company since delivering this certificate to Searls and have had no business transaction with the Company. Yes, after awhile we made a lot of inquiries about this Company. A representative of the Government called on me for a statement. I signed that power of attorney December 19, 1907, at the request of Thickens after being told it was a perfectly clean and legal proposition. Don't remember the Government representative who called on me. Yes, would say it was about April 23 or 24, 1914. Yes, he asked me to give him a statement in connection with these oil land matters, and I wrote him a statement (Plaintiff's Ex-

(Deposition of Frank H. Romaine, Jr.)  
hibit 58 shown witness), and he read the same.  
That statement (Exhibit 58) bears my signature.  
I dictated it. (Plaintiff's Exhibit 58 offered in evidence.) Said exhibit is as follows:

**Plaintiff's Exhibit No. 58.**

**"F. HALL ROMAINE & SON**

Women's Wear Specialists,

215 Fourth Avenue,

New York, April 24th, 1914.

Dept. L. Bachmann & Co.

Removed to 257 4th Ave.

Mr. J. McG. Williamson,

c/o McAlpin Hotel,

33rd St. & B'way,

City.

Dear Sir:

In accordance with your request made of the writer I give you the following information concerning my connections with the Empire Oil & Development Co. also the Pacific Oil Land Co:—

To the best of my recollection it was some seven years ago that I purchased four hundred shares in the Empire Oil & Development Co., for which I paid \$180. During the general financial disturbances in the latter part of 1907, this company went out of business and I never received a dividend on the stock during the time I held it. [516—410]

While a stockholder in the company I became acquainted with L. B. McMurtry, who was one of the officers. Sometime after the company went out of



business I was requested by Mr. Thickens, at that time a member of the firm of Nixon and Thickens, for whom I was working, to execute some powers of attorney authorizing Mr. McMurtry to locate oil lands in my name in the state of California. Very little was explained to me at that time as to Mr. McMurtry's plans, but no payments of any kind were demanded of me, nor have I paid out anything in connection with the transaction since then. The whole matter of signing these powers of attorney was more a matter of accommodation to Mr. McMurtry and Mr. Thickens than for any other reason.

I paid little attention to the matter after signing the powers of attorney and know nothing of the business which McMurtry transacted in California. Some three or four years ago, I received one thousand shares of stock in the Pacific Oil Lands Co., for which no charge was made and which I understood was given in consideration of my being a locator of the California lands. Recently I received a dividend of \$20 on this stock. In addition to that, we were recently asked to turn in our certificate of stock, for which we were promised \$250. This I agreed to do. The return of money invested in the Empire Oil & Development Company was also promised me.

To the best of my memory these are the facts as near as I can outline them to you. I cannot, however, vouch for the time anywhere above stated, nor the amounts mentioned, except the two last, which are recent enough for me to be sure of.

Very truly yours,  
F. H. ROMAINE, Jr." [517—411]

(Deposition of Frank H. Romaine, Jr.)

Cross-examination.

(Power of attorney, Plaintiff's Exhibit 4, shown witness.) I knew all of these signers, except Welch. Yes, I read it before signing it. Yes, my losses in the Empire Company were spoken of in connection with Mr. McMurtry's going to California or becoming agent on this power. Yes, Thickens told me that he and McMurtry were anxious to give all the persons who lost money in the Empire Company, persons that Thickens was connected with, an opportunity through his efforts to locate lands in California to make good their losses and make some money. Yes, Thickens told me at that time that I would be doing him a favor, because he got a lot of people interested in the Empire Company that had lost money. No, he did not ask me to sign so that McMurtry could get lands for himself. He located the lands for me. Nothing was said about McMurtry, Thickens or anybody else having an interest in the lands in case they were valuable, and there never was any talk between myself and Searls or McMurtry or any other person in which the subject of McMurtry's owning any interest in the land located should belong to him or that he should have any interest therein. No, I never had any intention that he should use my name for the purpose of obtaining from the Government any interest in mineral lands or minerals for himself. No, I never revoked, modified or set aside that power. No, Thickens never told me that I would hear from this again after signing the powers of attorney, nor did

(Deposition of Frank H. Romaine, Jr.)

Thickens or anybody else ever tell me prior to my signing the ratification that as soon as anything was done of importance, I would get reports upon it, not that I recollect. Yes, when I signed the ratification I knew that I was ratifying the power of attorney. I knew that some contract had been made by my agent with the people mentioned in the ratification concerning the lands located in my name. I [518—412] knew that the people with whom McMurtry was dealing demanded such ratification to show that they were real powers of attorney, that the people were still alive, and that the powers had not been revoked. Yes, I then knew that these people were going to drill on the lands and were going to pay so much a barrel out of the oil if oil was discovered, and knew that there was some question made on account of the withdrawal of these lands by the Government. I have heard of it very indirectly; I don't know whether I read it in the paper or not, but I did indirectly hear of it. (Extract from the report, Plaintiff's Exhibit 35, read.) Yes, that's where I saw it. Yes, hearing that read now refreshes my memory to the effect that I had heard of that danger before—danger of the Government's taking the lands from the locators or from the Pacific Oil Lands Company. Yes, my memory being refreshed; I now know that I was mistaken when I said I received this \$250.00 at my office. I received that at the Waldorf at the time I received this certificate of stock in the Pacific Oil Lands Company. Yes, it is true that I indorsed this check at McMurtry's

(Deposition of Frank H. Romaine, Jr.)

rooms at the time I got the certificate of stock. Yes, at the time I received the certificate I got the impression that this corporation was formed for the purpose of taking care of the interests of the locators, and McMurtry then told me that the contract this corporation had with the Associated Oil Company would make the property valuable, and that the contracts which I had ratified had been assigned to the Oil Company and held in that way. Yes, before getting this stock I had been told by McMurtry that oil had been drilled for and found on some of these lands. Yes, that must have been at the Waldorf in 1911, as that was the only time I was told anything by him. No, I haven't the slightest recollection of being advised at the time I signed that check that the writing on the back meant [519—413] nothing and was simply a matter of form. Yes, when I gave this Empire oil stock to Searls at the time he gave me the \$250.00 for the Pacific Oil Company stock, I knew that the Empire Company stock was worthless, and Searls said that McMurtry would pay me some day the amount I had lost on the Empire stock—when he had gotten his affairs straightened out. I understood the \$250.00 was for the Pacific Oil Lands stock. (Attention of witness called to letter, Plaintiff's Exhibit 58.)

Q. \* \* \* Explain what you mean by that statement in that letter. A. In the first place, it was explained to me that it would be an accommodation to Mr. Thickens if I would do what I did, and also to Mr. McMurtry. That is where the ac-

(Deposition of Frank H. Romaine, Jr.)

commodation came in. In the second place, it was for my benefit to do so.

No, there was no statement by Thickens that I would be giving McMurtry any interest in the lands located. He didn't say anything about accommodating Mr. McMurtry. I think that is a mistake of mine.

#### Redirect Examination.

In my statement that I had some recollection of hearing of the attempt on the part of the Government to take these lands away prior to receipt of this report in 1914, I said it was indistinct in my mind, but I thought it was in the papers I had seen it. That report was the first definite knowledge I had of these threats. No, I do not know that J. B. Thickens was a locator on any of these lands. Yes, I know L. B. McMurtry was. Why, I was told so by Mr. Thickens, that he was the main one in the whole business. Yes, during all these transactions I had the idea that McMurtry was a locator and interested in these lands—that is, in the Pacific Oil Company. Yes, I mean that I understood that he was a locator in these lands that had been located by me and [520—414] others and had the impression during all these transactions that McMurtry was interested in these lands along with the rest of us. [521—415]

#### Deposition of Eugene Metz, for Plaintiff.

EUGENE METZ, called April 24, 1917, by plaintiff, testified by deposition as follows:

Was 31 years of age January 4, 1917; salesman



(Deposition of Eugene Metz.)

for Nixon, Walker and Tracy, woolens, at 45 East 17th Street, New York; and reside at 301 Laffertz Avenue, Brooklyn. In December, 1907, was a salesman for Nixon & Thickens, 79 Fifth Avenue. Never lived outside of New York and New Jersey, and was never in the West prior to last November and December, and prior to December, 1907, had never been interested in any company engaged in producing or developing oils. First met L. B. McMurry in 1910. Thickens introduced me.

Q. The records of Kern County, California, disclose that there is recorded a power of attorney which purports to have been executed by Eugene Metz and others (substance of Plaintiff's Exhibit 4 stated). Are you the Eugene Metz whose name appears on that document? A. Yes, sir.

Thickens came to me and asked me if I would give a friend of his a power of attorney to go and locate lands for me, and so I asked him what it was for, and he said to try and find oil, and he said to me if he found oil, you would probably make a lot of money out of it, and so naturally I became interested, and I was willing to sign it, and I signed it. I think that was the only conversation I had had with anyone before the signing. I then knew, as a citizen, I was entitled to some land in this country, if I could get it. My father had taken some farm land in Wisconsin and I didn't know but maybe I was entitled to the same thing. No, Thickens didn't say he was trying to get farm or mineral land. He said to try and locate land and get oil. No, I didn't

(Deposition of Eugene Metz.)

then know how many acres constituted a claim or how many persons [522—416] were required to make an association claim and received no particular advice on that matter from Thickens that I recall. Knew George F. Handel. Don't remember of going before him and acknowledging that paper. Cannot say that anyone else was present. Don't remember. No one else engaged me in conversation then. After signing the paper heard nothing of this matter until 1910 and had no conversation with any person concerning oil land matters during that time—between the signing of the paper and 1910. In 1910 McMurtry came into our office and said he had located oil lands, and he expected to get a lot of oil out of that land, and it was such a big proposition he would have to sell part of the land in order to get money to work the balance of the land; that it cost a lot of money to run the thing and the only way to get all of this money was to sell part of it and use that money. No, I didn't then know how many locations had been made, or the area, and made no inquiry of McMurtry. McMurtry then asked me to give him a ratification of my power of attorney. (Plaintiff's Exhibit 59, being photographic copy of ratification, shown witness.) That paper bears photographic copy of my signature and is the one I executed in August, 1910, at the request of McMurtry. About a month later I received \$250.00. McMurtry had told me that I would probably get \$250.00. Said it would come from the money he would receive for the sale of the lands. No, at

(Deposition of Eugene Metz.)

the time I signed that ratification I knew nothing about the matters set forth therein and made no inquiries of McMurtry or anyone else as to the contents or purport of that contract of August 4, 1910. We trusted him. I didn't sign this ratification when McMurtry brought it in. Stated that I wanted to look into it and see a lawyer, and we took it up with a lawyer and he read it over and he said it was all right, only insert that word "lawful." When I say "we," I [523—417] mean Mahr, Walker, and Wilson, who had been working for Nixon & Thickers, but were then with a different firm—Porter & Wilson. Mr. Worthen was the lawyer we consulted.

(Plaintiff's Exhibit 59 read into deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman, except the insertion of "lawful" as the fifteenth word from end, and purports to have been executed by Eugene Metz.)

This \$250.00 which I received about a month after signing the ratification was given me by F. H. Searls at the Second National Bank. Believe he was with McMurtry when I signed the ratification. Thickers told us that Searls was up there and if we went up there we could get our money. By "we" I mean Mahr, Walker, Wilson and myself.

Q. I invite your attention to a check which is in substance as follows:

"San Francisco, 1/8/14. No. 1182. The Bank of California, National Association, San Francisco. Pay to the order of Eugene Metz,

(Deposition of Eugene Metz.)

Twenty dollars. (signed) Pacific Oil Lands Co.  
F. E. Harrison, Secy-Treas. L. B. McMurtry,  
Vice-Pres."

I don't remember seeing that typewriting above my signature when I signed. Don't think it was there. The check was in my hands just about two seconds. Thickens handed me the check and said, "Endorse this, and I will identify you at the window." He wanted to get through with it in a hurry, and I handed it right back to him. Have no recollection of reading the typewriting or [524—418] its being there. He said it was money that McMurtry had promised me a month previous. It was for lands located for us. No, I didn't know to whom it had been sold and did not inquiry. The next I heard was about September, 1911, McMurtry came in and gave us one thousand shares of stock. Don't remember having had any conversation with anybody about this during that period, September, 1910, to September, 1911, and during that time made no inquiry with regard to these lands or their condition. Think Thorne came in with McMurtry to our office and gave us this stock. Yes, this stock certificate No. 16 of the Pacific Oil Lands Company looks like the one that I received, and the stub of the certificate bears my receipt, dated September 14, 1911. McMurtry then said he had formed a company to take the locators and that he had given me that stock and that was my share. No, I didn't then know how many shares of stock this company had or how many locations had been made under my power or

(Deposition of Eugene Metz.)

the area or extent of land located or the debts or resources of the company, or what had been done under the contract of August 4, 1910, mentioned in the ratification. No, I didn't know whether or not a supplemental contract had been made or any change made in the contract of August 4, 1910, and made no inquiries about any of these matters. All I said to McMurtry was, "How are things getting along?" and he said, "All right," and he said he hoped to do more for us later. He said, "Put that away in a safe and don't sell it, because it is worth its face value to-day," and if I wanted to sell it, to notify him and he would buy it back. Yes, he said then there was oil on the land—oil had been discovered—very large quantities. No, I didn't inquire of him as to what disposition was being made of the oil, or who the other stockholders in the corporation were. All that I knew were the locators. Didn't ask McMurtry if he was a stockholder or make any inquiries [525—419] as to Mr. Hoeppner. Didn't notice his signature on the stock. Did not know him. I next got a notice of a meeting of the Board of Directors in 1912 and one in 1913. (Plaintiff's Exhibit 40, dated August 4, 1913, shown witness.) Yes, I received a similar notice. Yes, I received a paper to sign—that was in about December, 1913—authorizing a distribution of dividends. That paper (Plaintiff's Exhibit 60) bears my signature and I remember having executed that proxy.

(Plaintiff's Exhibit 60 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5



(Deposition of Eugene Metz.)

with the deposition of Frank B. Chapman and purports to have been executed by Eugene Mitz, August 13, 1913.)

Yes, this consent to distribution of dividends (Plaintiff's Exhibit 61) is the one I signed. It came to me through the mails, and that letter dated December 3, 1913 (Plaintiff's Exhibit No. 32), is similar to the one I received with it. The next transaction was the receipt of the dividend check which I received through the mail accompanied by a statement of the affairs of the company, also a letter similar to this letter, dated January 8, 1914, now shown me (Plaintiff's Exhibit 41). Yes, this statement of the company which I received was similar to the one now shown me (Plaintiff's Exhibit 35). Yes, I glanced over that report shortly after receiving it. The next spring Searls came up and he said he was sent by Mr. McMurtry to take up our stock.

(Plaintiff's Exhibit 61 read into deposition. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Eugene Mitz, December 9, 1913.)

When Searls came for this stock he said he was sent to [526—420] buy the stock by McMurtry; that everything looked bad; that the Government had instituted suits to reclaim the land, and if we didn't take this \$250.00 which he was offering for the stock, why we would get nothing, everything would be lost to all of us, and I fell for him. All I then knew about the condition of the company was

(Deposition of Eugene Metz.)

that everything looked black; everything would be lost. He gave us all \$250.00 each for this stock. I endorsed the assignment [527—421] in blank. The name Walter S. Brann was not in the assignment at the time and I then made no inquiry as to the resources and assets of the company, because he came and told us everything was down and out, and there could not be any assets. No, I made no inquiries as to the number of locations made or the area or extent, nor did I know, only I may have read it in the statement I got from the Company in January, 1914. Did not know what had become of the contracts of August 4, 1910, and the supplemental contracts referred to in the report, and did not know whether or not these contracts had been assigned to the Pacific Oil Lands Company. Yes, I went to San Francisco in November last and was there three or four weeks.

Q. Were you in consultation with anybody during that time?

A. We hired an attorney out there in the case we were starting against L. B. McMurtry. Yes, I spoke to Mr. Helm, Mr. Lawler and anyone that spoke about it. Was not called as a witness in any case, though I was out there ready to be called.

Cross-examination.

No, I was not interviewed by the Government and never signed any statement. (Attention of witness called to report, Plaintiff's Exhibit 35.) If the fact that these contracts were assigned to the Pacific Oil Lands Company appears in that statement, then I

(Deposition of Eugene Metz.)

knew it, but probably forgot it. Yes, at the time McMurtry got this ratification he told me that the money coming in from the contracts mentioned in the ratification was going to be used to develop the lands, and that it was doubtful whether the locators would get any of the money because the money was to come out of the oil found on these lands. The first I heard of the Government making the claim that they had withdrawn these lands [528—422] was when Searls came to me for the stock. No, I never undertook to set aside, modify or revoke this power of attorney, and no suggestion was ever made to me by Thickens or anybody that the use of my name was for the purpose of permitting McMurtry to locate lands for himself, or that in the event lands should be located it would redound to McMurtry's benefit in respect to the ownership in the lands located in my name. I understood I was a locator in my own right. Yes, after signing the ratification, the men in the office, Mahr, Romaine, Wilson, Herbert Walker, Rupert Walker and myself talked about this matter once in a while, about it probably being time to get some money from the lands. Yes, we understood this depended upon whether or not he located oil. No, I never had any intention in signing this power to cheat or defraud the Government. Yes, at the time I sign the power I knew some of these other signers, knew Harder, Keenan, Bashore, Walker, Romaine, and Mahr. No, none of those persons ever intimated that they intended that the locations made in their names were for the

(Deposition of Eugene Metz.)

benefit of McMurtry, Thickens or anybody else, nor did either of these persons or myself contend that our names had been used as an accommodation to McMurtry, Thickens or anybody else. Yes, I knew Hatch, Walter Wilson, and Farrell at the time I executed this power, when I signed this ratification I did so as an absolute locator and not for anybody else

Redirect Examination.

Don't remember Mr. J. McG. Williamson interviewing me on or about April 23 or 24, 1914, but if he was there, then I am the fellow. Don't remember who else was present. [529—423]

**Deposition of C. Rupert Walker, for Plaintiff.**

C. RUPERT WALKER, called by plaintiff April 25, 1917, testified by deposition as follows:

Am employed in the shipping department of Devoe & Taynolds, and reside at No. 17 McAuley Avenue, Jamaica, New York. Have never visited in the west, and prior to 1907 never acquired any public lands under the mineral land law and was not familiar with such law. In December, 1907, was working for Nixon & Thickens as bookkeeper, and knew John B. Thickens. Did not then know L. B. McMurtry, F. H. Searls, Daniel W. Darling, or S. H. Freeman, and had never owned any stock in an oil company. Don't remember knowing of the Empire Oil & Development Company prior to that time and had no meeting with its officers. I am the person whose name appears on that document (Plaintiff's

(Deposition of C. Rupert Walker.)

Exhibit 4). I was over in Nixon & Thickens and signed this paper for them. J. B. Thickens presented it to me. Don't remember any conversation with him prior to the time I actually signed the paper with regard to signing it. Remember going with Thickens before a notary there, but don't know who that was, though, now. Signed the paper as a favor to Mr. Thickens because he was my boss and employer, and I had full confidence in him. Don't remember just what Mr. Thickens said at that time, except that I know that I signed it as a favor to him, and the others had signed it. This was ten years ago, and it is very hard to bring it back to my mind. The next circumstances in connection with this matter was that in August, 1910, I received a letter from Mr. Thickens to come into the office, that he wanted to see me.

(Letter produced and read in evidence as Plaintiff's Exhibit 62, as follows:)

**Plaintiff's Exhibit No. 62.**

“Dear Walker:

Am very anxious to see you. Have something of interest to tell you. Are you working in N. Y. and could you come in to see me some day this week. Either write me or call me on phone 201 Stuyvesant. It is important, and know will be [530—424] welcome news. Just a little money coming to you, for your kindness in signing a paper for me three years ago. Will explain when I see you. Let me hear from you at once.



(Deposition of C. Rupert Walker.)

Aug. 17, 1910.

Sincerely,

J. B. THICKENS,

79 Fifth Ave.,

N. Y. City."

Between the time I signed the power of attorney and the receipt of this letter, don't remember having any conversation or conference with any person or persons with respect to these oil land transactions except Mr. Thickens had said that there would probably be some money coming to me. That was after I signed the power of attorney. After receiving this letter I did not call upon Thickens.

(Plaintiff's Exhibit 63, photographic copy of ratification dated August 22, 1910, shown witness.)

That is my signature. Mr. Thickens was working for some other firm at that time, just which I don't recall, and I went to his place of business. All that I can remember is that I signed this paper at that time. No money was then paid me. C. W. Thorn came to my office in 1911 and gave me \$250.

(Check No. 166, for \$250, dated Sept. 11, 1911, payable to C. Rupert Walker, similar to Defendants' Exhibit T, shown witness.)

That is signed "F. H. Searls," and on the back of that check is the following typewriting:

"Received from L. B. McMurtry, \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney

(Deposition of C. Rupert Walker.)

made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

That check bears my signature, but I don't remember that typewritten form on the back of that check at that time. C. W. Thorn brought it to my office and said that he brought the money in cash with him, and if I would just endorse the check, why he would give me the money in cash. Think he said it was from the [531—425] sale of oil lands. Don't remember anything else. Don't remember definitely what he did say. Had made no inquiries of anyone as to the number of locations made or the disposition of any lands located under the power, nor did I know anything about the purport or contents of this contract of August 4, 1910, mentioned in the ratification. Have not been in the office for a week; have been sick since that first day I was over. After I signed this check I got the money and put it in the bank. Later, in 1911, I received a certificate for \$1,000 shares of stock in the Pacific Oil Lands Company. This certificate No. 15 is the one. C. W. Thorn presented it to me. Came to my office with it. This receipt on the stub shown me, dated December 16, 1911, bears my signature. All I remember is his saying that McMurtry was giving these shares of stock to the boys. I mean the boys in the office of Nixon & Thickers. He may have told me why he was giving this stock but I don't remember. I paid nothing for this stock, and did not then know the area of land located or the resources of

(Deposition of C. Rupert Walker.)

this company. I knew who some of the stockholders were. Each got 1,000 shares, but that is all. Didn't know that McMurtry or A. E. Hoeppner owned any of it. Had never met McMurtry.

(Plaintiff's Exhibit 64 shown witness, same being proxy dated August 12, 1913.) That proxy bears my signature. Mr. Thorn must have come with it.

(Plaintiff's Exhibit 64 read in evidence. This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman, and purports to have been executed by C. Rupert Walker, August 12, 1913.) [532—426]

(Plaintiff's Exhibit 66 read in evidence. This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman, and purports to have been signed by C. Rupert Walker, December 10, 1913.)

I remember signing that paper. There was a letter with it, which I now produce.

(Said letter offered and read in evidence as Plaintiff's Exhibit 67, and is as follows:)

**Plaintiff's Exhibit No. 67.**

**"PACIFIC OIL LANDS CO.**

748, 749, 759 Mills Building,  
San Francisco.

Telephone Sutter 471.

E. A. Hoeppner, President.

L. B. McMurtry, Vice-President.

F. E. Harrison, Sec'y and Treas.

December 3, 1919.

Dear Sir:

You are the holder of 1000 shares of the capital

(Deposition of C. Rupert Walker.)

stock of the PACIFIC OIL LANDS COMPANY. The corporation has \$20,000.00 in cash assets which it wishes to divide among its stockholders, but under the laws of the State of California the Board of Directors cannot do so without the consent of all the stockholders of the corporation.

We herewith inclose you a written consent to be signed by you and immediately returned to us. The majority of the stockholders have already given their assent to this proposition, and when all of the stockholders have consented, the dividend will be declared and your proportion thereof will be at once forwarded to you. There will be other amounts [533—427] from time to time that can similarly be divided without injuring the business of the corporation.

Please attend to this matter promptly.

Very respectfully yours,

PACIFIC OIL LANDS COMPANY.

By F. E. HARRISON,

Secretary."

Yes, after that I received some money. I received a check for \$20.00. This check dated January 8, 1914, No. 1181, on the Bank of California, is the one and bears my endorsement. A letter accompanied that check which I now produce. (Said letter, Plaintiff's Exhibit 68, offered and read in evidence, and is as follows:)

(Deposition of C. Rupert Walker.)

**Plaintiff's Exhibit No. 68.**

**"PACIFIC OIL LANDS CO.**

748, 749, 750 Mills Building,  
San Francisco.

Telephone Sutter 471.

E. A. Hoepfner, President.

L. B. McMurtry, Vice-President.

F. E. Harrison, Sec'y and Treas.

January 8, 1914.

Dear Sir:

Inclosed you will please find dividend check for \$20.00, the same representing your pro rata of the first distribution to the stockholders of the company of cash assets amounting to \$20,000, and to which distribution we hold your written consent.

Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.

Wishing you a very happy and prosperous 1914, we beg to remain,

Very truly yours,

PACIFIC OIL LANDS COMPANY.

By F. E. HARRISON,

Secretary."

Yes, another paper accompanied this letter and dividend check, which I now produce. Yes, this paper headed "Pacific Oil Lands Company, First Report to Stockholders," is the one received with this dividend check. (Said report, Plaintiff's Exhibit 69, offered in evidence, and is similar to Plain-



(Deposition of C. Rupert Walker.)

tiff's Exhibit 35. The envelope in which these papers, Plaintiff's Exhibits 67, 68 and 69, were received, offered in evidence as Plaintiff's Exhibit 70, the same being postmarked San Francisco, December 4, 1913.) (Plaintiff's Exhibit 71, the same being an envelope in [534—428] which some communication from this company was received by witness, bearing postmark San Francisco, August 5, 1913, offered in evidence as Plaintiff's Exhibit 71.) After receiving this check for \$20 the next I recall was a month or two later, Mr. Thorn came to me and asked me, in fact, told me that the Government was going to sue for the land, and that if Mr. McMurtry had these certificates in San Francisco, it would save a lot of expense; that he wanted to see us get something out of it, and so he offered me \$250 for the stock, saying that the other boys in the office were selling; so I sold my certificate for 1,000 shares for \$250, which I received, I think, in cash. Yes, I had then read this report to the stockholders. No, I didn't know how many tracts of land had been located in my name nor the area located. I knew some of the stockholders of the Pacific Oil Lands Company. I knew those who received 1,000 shares. Don't remember that I knew that Thorn, McMurtry or Hoepfner were stockholders, and made no inquiry. No, after surrendering this certificate never received any money or thing of value in connection with this oil land transaction. No, don't remember having received anything at any time after signing

(Deposition of C. Rupert Walker.)

this power of attorney, or making any inquiry, verbally or by letter, of any person in regard to these transactions. No, spent no money in connection with the development of any oil lands located by McMurtry in my name, nor was I ever asked to.

Cross-examination.

Yes, I have been ill and am not feeling very well. Am thirty-one years of age. My duties at present are checking out goods and making out bills of lading, for which I receive twenty-five dollars. Am unmarried and live with my mother and sister. No, I own no property. No, prior to signing that power of attorney at the request of Thickers, I had never signed any legal documents that I [535—429] know of, and since that time have owned no corporation stock except Pacific Oil Lands Company. Yes, I assist my mother; am the sole support, I guess, although my sister is also working. Yes, in 1907 I was getting \$12 a week and contributing a good part of it to the support of the family. Yes, that has been the condition right along since then. No, I never had \$250 before I received this amount from Mr. Thorn. I put it in the bank in my mother's and my name. No, I had no bank account up to that time. Yes, I knew these other men whose names appear before mine on the power of attorney. Q. And when you put your name on here you then knew that the power of attorney had been signed by the people whose names preceded yours—their signatures?

(Deposition of C. Rupert Walker.)

A. I didn't know what the paper was, but I signed it as a favor to Mr. Thickens, and they signed above mine, and I thought the paper was all right. Don't remember that I read it. I signed it as a favor to Mr. Thickens. No, I was not a personal friend of Mr. Thickens. He was my employer. I knew of no special reason why he should ask me to do him a favor. I had full confidence in him. He asked me to do him a favor and sign that paper. That is his language as near as I can remember it. Cannot say that anybody ever had mentioned oil lands to me before that. The only thing I can remember is something regarding oil lands in the paper that I signed, that is all. I think I saw it in the paper. Something about oil lands and Mr. McMurtry, too; that is all I remember. Yes, I am not feeling very well; am not sleeping very well, and am doctoring. Yes, taking medicine. No, can't say that my condition is as bad as bordering on nervous prostration. When Mr. Thickens wrote me in August, 1910, I telephoned him. I don't remember just what was said, except that he wanted to see me. In the letter he said he had some welcome news, some money coming to me. No, he did not [536—430] tell me when I signed this power that there would probably be some more coming to me. He told me that some time in the office while I was with Nixon & Thickens. He told everybody that. Yes, I knew the boys, Mahr, Herbert Walker, Metz and those people. No, I wasn't greatly surprised when

(Deposition of C. Rupert Walker.)

he told me in the letter that there was some money coming to me. No, I didn't ask him when he told me that money was coming to me out of the transaction why there was money coming to me. Yes, when I signed the power of attorney he may have said something about McMurtry and about his going out to California locating oil lands. Don't remember his saying anything about giving the boys in the office a chance by giving McMurtry a power of attorney to locate oil lands to make some money. Yes, I have trouble trying to understand the questions, sometimes. (Witness excused until April 27, 1917.)

Cross-examination Continued—April 27, 1917.

Yes, I feel better. My head seems a little clearer. I don't remember just what was in the power of attorney. Didn't know at the time it was a power of attorney. Signed it for Mr. Thickens. No, I did not know what it was at that time. Q. When did you find out what was in it? A. When Mr. Mahr called me up on the phone, before he went to San Francisco, and I learned then it was a power of attorney. Yes, that was in 1916. At the time I signed it did not know what it was about. The only thing I remember was that I saw Mr. McMurtry's name, and something about land; that is all I know, that is all I can recall. No, I did not read it all. No, I did not know when I signed it that I gave Mr. McMurtry or anybody else a power of attorney to locate land in my name. Yes, I signed another paper for Thickens in 1910, when

(Deposition of C. Rupert Walker.)

I went into the office, I signed some papers. I have since found out it was a ratification. Don't remember reading the ratification. Cannot [537—431] recall what Dickens then said. He told me there would be some money coming to me for signing the paper for him. I don't remember anything else. Don't remember that he said where the money was to come from. Cannot remember whether or not Dickens read the ratification to me, or whether I did. Yes, I went to the notary's office with Dickens, and the notary probably took my acknowledgment. I remember signing the paper at the notary's office. (Plaintiff's Exhibit 63 handed to witness.) Yes, I have now read this ratification. Yes, I remember reading it the other day here. I now understand what this paper is. Q. Well, what is it? A. A ratification. Q. What does it ratify? A. The original power of attorney. Q. Anything else? A. And for Mr. McMurtry to sell land. Q. Does it ratify anything besides the original power of attorney, giving him authority to sell lands? A. It ratifies the former power of attorney. Q. Is that all you remember that it ratifies? A. All other contracts, does it say? Q. Yes, it speaks of contracts. When you went down into the notary's office, did Dickens tell you how much money was coming to you. A. No, sir. No, I don't remember that he said how much money was coming to me. It is not very clear. Yes, he did say there was some money coming to me. He may have said it was out of oil contracts that I was ratifying, but



(Deposition of C. Rupert Walker.)

I don't remember whether he did or not. Don't remember his saying when it was coming or how much. Don't remember that he said who was going to give me any money. I know it was in August that I went to his office, because that was in the letter that he sent me, asking me to call at the office, and saying that there was some important news that he wanted to tell me about, and that there was some money coming to me for signing a paper for him three years ago. Think I was then working for Devoe & Raynolds. Yes, when I got the [538—432] letter I recalled the paper that I had signed three years ago. Didn't recall the character of the paper or what it contained. Think Thickens told me one time that there might be some money coming to me for the favor. No, he didn't promise it at the time I signed the paper, and I didn't sign it because I expected him to pay me. Don't remember that he said I might get some money through locations that were made under the power of attorney. Yes, at the time I went to his office he may have said that McMurtry had disposed of some of the lands and that there had to be a ratification, and then there would be some money coming to all of the locators. No, asking this question does not call this to my mind. Yes, when Thickens came to see me and told me he had \$250 for me, I think he did say that it came from my interest in the oil lands from McMurtry. He said he brought the money in cash and I would sign the check and it would save me a trip to the

(Deposition of C. Rupert Walker.)

bank. Don't recall his saying that what was written on the back of the check was a matter of form. No, had had nothing to do with Thorn before that. Don't remember speaking to Thickens about it. Don't remember that I notified Thickens that I had received it. Q. Look here: don't you see, Mr. Walker, if you signed a paper only to do a favor for another man, and you got any money out of that paper, that it would belong to the other man? A. No, not in that sense. Mr. Thickens said I was to get some money. Q. Then in the very beginning Mr. Thickens said if you signed that paper, you might get something out of it? A. Not from the beginning. Q. Well, when did he say it? A. Some time in the office. No, he didn't say that any money they might get out of that would belong to L. B. McMurtry, or that any land that I might get out of it would, not that I remember. No, he didn't tell me at the time I signed the power or afterwards, that if I got anything out of [539—433] signing that paper, either land, money, stock, bonds, or dividends, it would belong to McMurtry, Thickens, Searls, Thorn, or anybody but myself. Did not understand why this statement was sent me or why they wanted my ratification. Yes, I now understand because I know it was locating in my name. I knew the money, this dividend check came from the Pacific Oil Lands Company. Q. Where did they get it, did you know at the time? A. No. That was in that statement. Q. What was in that

(Deposition of C. Rupert Walker.)

statement about it? A. That that was received from the Associated Oil Company, I think. Don't recall that I received any information that any of the land was being transferred to anybody other than the Associated Oil Company. Yes, I guess my mind and health were in better condition when I signed the power of attorney and ratification than now, and my memory better than it is to-day or was last week. Yes, I generally read over all papers I sign, but this power of attorney was not explained to me and I just saw enough to know that it was about lands and had McMurtry's name in it. Have been away from my office duties for about two weeks. It will be two weeks on Monday. My duties consist of checking goods out and making bills of lading. Have not been feeling well, this investigation has made me feel bad. Have been suffering in the back of my neck and head and the doctor said I should take a rest. I have been trying to recall these matters, but have not been able to recall the exact details. [540—434]

**Deposition of William A. Keenan, for Plaintiff.**

WILLIAM A. KEENAN, called April 25, 1917, by plaintiff, testified by deposition as follows:

Am a woolen salesman, and reside at 2405 Grand Avenue, New York City. Was born in New York State and have never lived in any of the western states. No, prior to December, 1907, never acquired title to any public lands, nor was I familiar with the public land law, but knew that it was

(Deposition of William A. Keenan.)

possible for an American citizen to locate lands. In December, 1907, was working for Nixon & Thickens, as sample clerk. Never had been interested in any corporation or association engaged in the production or development of oil, or mines, or mineral. Q. The records of Kern County, California, disclose that on December 19, 1907, W. A. Keenan and a number of other persons, executed before George F. Handel, a Commissioner of Deeds of the City of New York (substance of Plaintiff's Exhibit 4 stated). Are you the W. A. Keenan whose name appears on that instrument? A. Yes, sir. Signed it in the office of Nixon & Thickens, at 79 Fifth Avenue. Had then been in the employ of Nixon & Thickens since about January, 1905, and knew John B. Thickens, of the firm. Was not acquainted with L. B. McMurtry, C. W. Thorn, F. H. Searls, or F. E. Harrison. Believe I had seen McMurtry around the office, once. Thickens presented this paper to me. Had no talk with him before about oil matters. To the best of my understanding, no one else was present but Thickens and myself. Thickens asked if I was twenty-one years of age and I told him I was, and he said I want you to give me your power of attorney, and I want Mr. McMurtry to locate oil lands for us in California. Q. And by "us" whom did he mean, if you know? A. There were at that time at least three or four signatures on the paper, at the time I signed it. I then knew Herbert M. Walker, F. H. Romaine, Jr., C. Rupert Walker, [541—435]

(Deposition of William A. Keenan.)

Eugene Metz, William Mahr, and H. E. Bashore, but not R. B. Welch. At that time I don't think there was any further conversation than he mentioned about the power of attorney, and said it would prove of value to us in the future. No, I did not then read the power of attorney and had no talk with Thickens or any other person in regard to these oil land matters or giving my power of attorney to McMurtry, other than I knew this power of attorney was going around the office, and it was for McMurtry to locate oil lands in California for the people who signed the power of attorney, and I was afraid Mr. Thickens was going to leave me out of it, and if he had not asked me, I would have asked him to let me in on it. Prior to that I had never had any direct conversation with Mr. Thickens on the matter at all. I had heard Mr. McMurtry's name expressed and had overheard other conversation around the office regarding Mr. McMurtry and his oil lands. Yes, I had heard about the Empire Oil & Development Company, but had no stock in it. Q. Who had you heard talk about this matter around the office? A. Why, I don't know as I could tell just at this time who the particular people were. I was a young man around the office all the time, and without eavesdropping I was the recipient of a whole lot of conversation, and I understood there were several men in the office who had—that is, outside of Mr. Thickens—that had invested money in an oil company that Mr. McMurtry had, and I believe they called it the Empire. No,



(Deposition of William A. Keenan.)

heard no more about this for the next month or so, or for the next year, until 1910. Nixon & Thickers dissolved, I believe, in May, 1908. Don't recall that I heard any conversation about this power up to that time, nor did I seek any information from Thickers about oil lands, nor received any information from any source that I can remember. In 1910, say probably about August, I was employed with another firm in [542—436] the Knickerbocker Building, Lindsley, Hanf & Company. Thickers came in to see me and asked me if I recalled the power of attorney that I had given to Mr. McMurtry to locate oil lands in California, at some time previous, and I told him yes, and he said there is some money coming to you, and it is necessary for you, it is necessary to have you ratify that power of attorney, so he took me out to a notary, who is in the same building, whose name is Louis C. Goetting, and on the way to the notary's office I asked Mr. Thickers what had happened, and he told me that Mr. McMurtry had succeeded in locating oil lands and some of the oil lands had been sold and there was a payment of \$250 coming to me, which was the beginning, and there would be more payments from time to time.

(Plaintiff's Exhibit 72, same being photographic copy of ratification dated August 20, 1910, shown witness.) That is a copy of my signature. Yes, I read it before signing, but don't know that I gave the language special attention and made no inquiry of Thickers or anybody else about the contract of

(Deposition of William A. Keenan.)

August 4, 1910, with Herrin and others, mentioned, and was not then advised. Did not know how many locations had been made under my power of attorney and made no inquiry as to that or the extent or area of lands located by McMurtry under such power. What I have stated is all I can recall of the conversation between myself and Thickens at the time I executed this ratification. About a year later C. W. Thorn called to see me. He introduced himself as an agent of Mr. McMurtry's, and he said I probably knew what he was there for, which was to pay me \$250, which had been coming to me. Between the time I signed the ratification and the time Thorn came to see me I had probably called Thickens over the telephone maybe half a dozen times and inquired about this matter. I inquired what had happened, that some of the locators, the fellows that I knew, had received [543—437] their money and I had not, and Mr. Thickens explained that one of the locators had died and I could not receive my money until his will had been probated. At this visit Mr. Thorn produced a check and said it would probably be more convenient to me if he would pay me the money and rather than save me the inconvenience of going to the bank to cash the check, that he would cash the check for me with my endorsement. I endorsed the check and he gave me the cash.

Q. I invite your attention to the check, which is as follows:

(Deposition of William A. Keenan.)

“No. 165. New York, September 11th, 1911.  
Second National Bank of the City of New York.  
Pay to the order of W. A. Keenan, Two Hundred and fifty dollars. (Signed) F. H. Searls.”

On the reverse side thereof I find the following in typewriting:

“Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

Now, just below that is the signature of W. A. Keenan. Is that your signature (showing witness)? A. Yes, sir. I had that check in my hand just long enough to endorse it. Do not know whether or not the typewriting was on there when I signed it. I did not read it. Never read it before to-day. There was no other conversation. I knew a year previous that I was to receive \$250. No, did not then know what particular lands had been disposed of and this money raised from; made no inquiry; nor how many locations had been made. Knew the locations were to be made in California, but did not know the particular county or oil district and made no inquiry. Retained this \$250. Did not buy stock with it. A month or two after this I got a telephone call to meet McMurtry at the Waldorf-Astoria Hotel. Don't know who telephoned me. Was not advised what was wanted.

(Deposition of William A. Keenan.)

Had then never met McMurtry [544—438] or Searls. At the hotel met McMurtry and Thorn, and before I left F. H. Romaine, Jr., and Mr. Farrell came in. The only conversation was McMurtry's talk in general to all of us. When I got there Mr. McMurtry had some certificates of stock and he started to talk about locating oil lands and what trouble he had to hold them, and he gave us each a certificate and said that that represented, I believe it was, the Pacific Oil Lands Company. Said the Pacific Oil Lands Company was formed to take care of the original locators, and that the stock, the land held by that company represented the best that had been located, and the stock at that time was supposed to be worth about a dollar a share, that is the face value of it, but that it was worth double its face value at that time, and for us to put that certificate of stock away and forget about it, as it was valuable, and that at any time we cared to dispose of it or sell it, to get in communication with him. That is all I recall, other than he had quite a lengthy conversation about the locating of the lands, and how he had to care for them, and a lot of conversation along that line; I don't just remember. (Attention of witness called to certificate No. 14, for 1,000 shares of stock of the Pacific Oil Lands Company, together with receipt for same, dated September 15, 1911.) Don't just recall signing that, but that is my signature. I put this certificate away and forgot about it. Was there not more than about ten minutes. Did not then know how

(Deposition of William A. Keenan.)

many locations had been made under my power or what the assets or resources of this company were, or the area of the land located, or the state of development of the lands located. Yes, if I am not mistaken, I think McMurtry said something about oil having been discovered on the lands. No, I made no inquiry at this meeting with McMurtry about the questions just asked, nor had I inquired of any [545—439] person before that. The next transaction, I believe, was about a year later, in 1912, when I got a letter stating that there was to be a meeting of the Pacific Oil Lands Company in San Francisco. William Penn Humphries of San Francisco has the letter. No, at that meeting with McMurtry at the Waldorf-Astoria, I did not know who the stockholders of the Pacific Oil Lands Company were, or whether or not McMurtry held any stock. Believe the name E. A. Hoeppepner appeared on the letterhead that I received as one of the directors. No, I did not know at the time I met McMurtry at the Waldorf-Astoria that Hoeppepner was a stockholder, or that McMurtry was. Did not then know F. E. Harrison and made no inquiry whether or not he was a stockholder, or whether F. H. Searls was; didn't know him. Yes, Humphries is my attorney. No, between the time I met McMurtry in September, 1911, and the time I received this letter in 1912, I made no inquiry of any person with reference to these oil land matters. May have met Thickens, but not Thorn. Made no inquiry of Thickens during that time about the affairs of the



(Deposition of William A. Keenan.)

company. I figured on Mr. Thickens as my boss, employer, and I had most implicit confidence in him, according to my best understanding, Mr. Thickens had been associated with Mr. McMurtry in the oil development business, and I never paid any further attention. About a year later I received another notice of meeting, which Mr. Humphries has. (Plaintiff's Exhibit 40, being a letter dated August 4, 1913, shown witness.) Yes, that is similar to the letter I received in August, 1913. (Plaintiff's Exhibit 73, being proxy, dated August 12, 1913, shown witness.) Yes, that paper bears my signature. Believe Thorn brought that in. I had forgot it and don't recall any conversation about it at that time. Did not see Searls, McMurtry or Harrison during August, 1913. I next received a letter enclosing consent to distribute [546—440] dividends (Plaintiff's Exhibit 74, being consent dated December 9, 1913, shown witness). Yes, that is the consent that I signed.

(Plaintiff's Exhibit 73 offered and read in evidence, and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by William A. Keenan, August 12, 1913.)

(Plaintiff's Exhibit 74 offered and read in evidence, and is as follows:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank

(Deposition of William A. Keenan.)

B. Chapman and purports to have been signed December 9, 1913.)

(Plaintiff's Exhibit 32, letter dated December 3, 1913, shown witness.) Yes, I believe I received a similar letter. Yes, I signed this consent to the distribution of dividends and returned it to San Francisco. No, then made no inquiry as to the assets or resources of the company, or the number of locations or area of land located under the power of attorney; nor did I have any advice on these subjects, or who the stockholders of the company were. I next received a check for \$20. This check No. 1180, dated January 8, 1914, on the Bank of California, for \$20, is the check and bears my endorsement. If I received a letter with that I turned it over to my attorney, Mr. Humphries. Yes, I received a letter similar to this letter dated January 8, 1914 (Plaintiff's Exhibit 34). Yes, I received with the dividend check a report of the condition of the company, which Mr. Humphries has. To the best of my knowledge it was similar to Plaintiff's Exhibit 35. When I received that report we thought that maybe this thing was going to turn out to be a big proposition for us. By "us" I mean myself and the locators that I came across at different times. For instance, Mahr, Metz, Walter Wilson, and J. E. Farrell. No, I made no further inquiry as to the affairs of the company. Since 1908 we locators [547—441] have been separated and with different firms, and would meet only occasionally. The next occurrence that I recall was in the

(Deposition of William A. Keenan.)

spring of 1914, in response to a telephone call, I believe from Metz. I met Searls in some office there in the building, Porter & Wilson, I believe. Searls was already there and said he had already had a conversation with the boys and that they had decided to do what he had advised. And he said he would give me a general idea. He said the affairs of the Pacific Oil Lands Company were in very bad shape; that they were practically financially embarrassed, and that the Government was suing to take the land back and to protect us as locators, why, Mr. McMurtry wanted us to turn our stock over to him for which he would pay \$250, and Mr. Searls said everybody else had agreed to do it on account of conditions and he would rather have us get something out of it than nothing, so I agreed to do as the others had done. No, Searls did not give me \$250. I didn't have the stock with me. I surrendered it to C. W. Thorn probably a day afterwards and he gave me \$250, and I signed the certificate. The date on the assignment shown me, March 18, 1914, is about the date. Mr. Thorn called to see me in the office of Patterson & Greenough, and he said that while Mr. McMurtry had offered to pay us \$250 for our certificate of stock, that he could ill afford to do so on account of his financial condition, and Mr. Thorn wanted me to exchange my certificate of stock in the Pacific Oil Lands Company for stock in the Columbus Midway Company—I believe that was the name of it—and he said he was personally interested in that company,

(Deposition of William A. Keenan.)

and that it was a good business proposition, and he would leave it to my consideration and call again in a day or two. When he called again I decided not to take the Columbus Midway stock and accepted the \$250. At that time the only thing I knew as to the [548—442] number of locations or acreage was that given in the report. Made no inquiry to ascertain how many locations had been made in my name. I don't know where I got the impression, but it was the understanding that each of us locators I believe had located something like 160 acres, I understood in the southern part of California. The only stockholders that I knew of were the locators that I knew personally. Yes, I believe they brought that to my attention before, if I am not mistaken; at the time of Mr. McMurtry's conversation he referred to Mr. Hoeppner as Major Hoeppner, and if I remember rightly, he mentioned him at that time as being a stockholder. No, at the time I surrendered my certificate, didn't know how many shares Hoeppner owned, and made no inquiry; nor did I then know how many shares McMurtry owned, or make any inquiry. No, at the time I surrendered my stock, I made no inquiry to ascertain what had been done under this contract of 1910, mentioned in the report. Never had received any other money after surrendering my stock on account of these locations made by McMurtry in my name. No, never spent any money for the purpose of holding or developing those lands so located. I never was asked to. Yes, was in San Francisco in November, 1916. Was not called on to testify.

(Deposition of William A. Keenan.)

Cross-examination.

No, in the conversation with Thickens at the time I signed the power, he said nothing about my name being used by McMurtry to locate land for himself or McMurtry, nor was there any intimation that Thickens or McMurtry or anybody in the interest of McMurtry or Thickens or anybody else that they wanted to use my name for their benefit in making the location of oil lands. Nor did I hear any statement by Thickens to any of the boys in the office to that effect. No, it was not my intention before or after executing [549—443] this power that it should be used for the purpose of locating lands for the benefit of McMurtry or Thickens, which benefits were to come out of the lands located in my name, nor was it my intention that this power should be used for any illegitimate purpose or for defrauding the Government. No, I never repudiated or modified, or undertook to set aside this power of attorney. Yes, I believe in this conversation with McMurtry, Major Hoeppner's name was mentioned in connection with these locations, but in just what way I cannot recall. [550—444] Yes, at the time I received the stock I understood that on some of these locations oil had been discovered.

Q. Didn't he also tell you at that time and those other gentlemen in your presence that the money that had been expended in taking care of those lands and paying for help, for these hardships, etc., who were mentioned, in order to save the locators from going down in their pockets and in order to



(Deposition of William A. Keenan.)

finance them, that this corporation was organized and all those people had been or were going to be paid in the stock of the corporation? A. Yes, sir.

Yes, at the time I signed the ratification I had read the report as to the sale of some of those lands or contracts of sale with some of those people, and knew that I was confirming the contracts. Yes, I understood that the reports showed the acreage located. No, at the time Searls suggested to me that the lands were involved in litigation he did not say to me that I could keep my stock and take a chance on it or take \$250 and make a sure thing of it. As I understood it, the only way to protect the interest involved would be to turn it over to him so that he could make a fight on it.

#### Redirect Examination.

Yes, I stated that I considered this stock that I received in the Pacific Oil Lands Company as my own and that no one else was interested in it. The impression that I received at that time was that only part of the lands up to that time had been developed, or was in the process of development, and that the best lands were being held by the Pacific Company.

Q. Was it your understanding that there were other lands upon which you had been located, and which you had, or rather which had not been transferred to the Pacific Oil Lands Co.? [551—445]  
A. At that time, why, I could not give any positive answer regarding it. If I have your question correctly. May I answer that question again after

(Deposition of William A. Keenan.)

I hear the question? (Question re-read.) A. You mean at the time I received my stock? Q. Yes.

A. Why, I had nothing to show that there were any other lands at that time that had been located. You asked me at the time I got the certificate of stock, if I thought there were other lands which had not been located, that were not included in the Pacific Oil Lands Company. Q. Yes. A. My understanding at that time was that there were other lands.

Q. Did you have that same understanding at the time that you surrendered your certificate in the Pacific Oil Lands Co.? A. No. Q. Did you at the

time you surrendered your certificate in the Pacific Oil Lands Company, think that all the lands upon which you had been located had been transferred to the Pacific Oil Lands Company? A. Why, I cannot answer that question. No, I did not have any advice on the question. Q. Did you treat this certificate of stock in the Pacific Oil Lands Company as representing all of your interest in that company, in the lands which had been transferred to it. A. No.

No, there was no understanding that I would be called on for money for the purpose of holding or developing lands located in my name. [552—446]

**Deposition of Herbert M. Walker, for Plaintiff.**

HERBERT M. WALKER, called on behalf of plaintiff April 25, 1917, testified by deposition as follows:

Am vice-president and sales manager of Nixon,

(Deposition of Herbert M. Walker.)

Walker, & Tracy, Incorporated, and reside at No. 10 Wachung Avenue, Montclair, New Jersey. Was born in New Jersey and never resided west of the Mississippi. Never resided or traveled west of the Mississippi. In December, 1907, was a salesman for Nixon & Thickers and prior to that was not familiar with the United States Land Laws. Never had been interested in any corporation or business engaged in the development or production of oil or minerals. Did not know the rights of a citizen with respect to the public domain.

Q. The records of Kern County, California, disclose that on December 19, 1907, Herbert M. Walker and other persons executed a power of attorney (substance of Plaintiff's Exhibit No. 4 stated). Are you the Herbert M. Walker whose name appears therein?

A. I am Herbert M. Walker. I am the Herbert M. Walker who gave Mr. McMurtry the power of attorney to locate oil and mineral land.

Don't just remember whether I signed that instrument at our office or the office of James, Schell & Elkus. That is the law firm with which Mr. Handel is connected. Don't remember appearing before Handel, but I must have if I acknowledged it or if he acknowledged me to it. That is a long time ago. It was probably Mr. Thickers who presented it to me, but I cannot remember just little details that far back. I was connected at that time with Nixon & Thickers, in the capacity of salesman, and Thickers knew this McMurtry and at that time I believe McMurtry was interested in some oil company that he

(Deposition of Herbert M. Walker.)

wanted to sell shares for; that was prior to December, and Thickens wanted [553—447] me to buy some shares of stock in that oil company, and at that time I didn't have any money to put in oil stocks. I didn't buy any, and a little later Thickens came along and he said he had a friend by the name of McMurtry who was well up on oil lands and that he believed if he would give me the power of attorney to locate oil lands for us, it would prove valuable, and therefore I gave him the power of attorney. Cannot say whether or not he mentioned this before he actually asked me to sign it. I know he was very much interested in this other oil company that they were trying to sell stock for. That is all I can recall of what was said. Heard nothing further about it.

Q. Was the matter mentioned among you boys in the office there? A. I guess probaby it might have been mentioned at some time that we might hear something from it, and maybe we would not, but whether we were given to understand by Thickens—at the time, as I say, that it would probably be, if he located property that had oil on it, it would probably prove valuable, and I don't remember whether we talked about it, or whether it skipped our mind or not, I probably—well, as I say, I don't remember if he said anything further about it.

The next thing that I remember anything distinctly about is when McMurtry came in and wanted us to give him a ratification of our power of attorney. That was about three years later. (Plaintiff's Exhibit No. 75 shown witness.) Well, I remember now

(Deposition of Herbert M. Walker.)

as I read this that Mr. McMurtry wanted me to give him this ratification of the power of attorney, that before I would do it I consulted a lawyer on it, and he read it over, and he advised the word "lawfully" be inserted there, which I [554—448] notice has been done. Yes, it is between the words "acts" and "made" in the next to the last line. At that time Mr. McMurtry said that he had located property out there and he had very little money, and that in order to take and develop this property further, the way it should be, he would have to take and dispose of part of it in order to work the rest of it, and I therefore took and was given to understand by him at that time that unless he could take and dispose of part of it, that we, that is, the locators, would take and lose probably all of it. Therefore we took and gave him the ratification in order to try and hold what we had. He was in our office a number of times before I gave him that ratification. Think Thickers was probably around. I don't remember that McMurtry said how many oil locations had been made under my power "only I was given to understand by him that he had located a certain tract in my name. How much property it was, I cannot exactly at this time say," or how many tracts he had located in my name or the area. No, I made no inquiry of him on these subjects. Yes, I observed the mention in that ratification of these contracts. No, that did not attract my attention at the time and I made no inquiry of McMurtry about the contract of August 4, 1910. No, did not know what lands were affected by



(Deposition of Herbert M. Walker.)

it. The only way I took this was Mr. McMurtry's word for it, that he has to take and sell part of the lands in order to raise money and develop and hold the rest. No, I did not ask McMurtry specifically about this contract of August 4, 1910. I was given to understand by Mr. McMurtry that, unless we would give him this ratification that he would take and probably lose all the property that he had located for us. No, McMurtry [555—449] did not ask me to advance any money for the development or holding of these lands. Yes, I was promised a little money for signing this ratification—was promised \$250, that would be my share of the proceeds that would come from selling this part of it. I understood the proceeds from selling this part of the land would be used to develop the rest of the property. Yes, I understood that this \$250 was to be paid me and part use in developing the other lands. I certainly thought that the \$250 was about all that was coming to me for my share, from what he had sold. Yes, I understood McMurtry to say that. The next thing was about a year later. McMurtry came east and gave me 1,000 shares of stock in the Pacific Oil Lands Company. Yes, shortly after signing this ratification I received \$250. Thickens paid it to me. He said he had received from Mr. McMurtry the \$250 and if we would go with him to the Second National Bank that we would get the cash, and therefore I went up there and while I was there I met a man by the name of Thorn, also a man named Searls. Had never seen Searls before. Think Thorn had

(Deposition of Herbert M. Walker.)

been in the store. When I say "we," I mean four or five boys there in the office. We all come up together, as near as I can recall, Mahr, Wilson, Metz and myself, we came and met Thickers there. He introduced me to Searls and said, "This is Mr. Searls," and he said, "He is going to give you the money," and Searls said, "All right, boys, I am going to give you the money; come right over here to the paying teller's window and endorse the check, and he will give you the money for it." and as near as I can remember, we lined up to the paying teller's window and endorsed the check, and \$250 was handed over to us.

Q. I invite your attention to check No. 116, which is [556—450] dated New York, September 26, 1910, on the Second National Bank of the City of New York, and is made payable to the order of Herbert M. Walker for \$250, and is signed F. H. Searls. On the reverse side of that check I find the following in typewriting: "Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907." And underneath that is your signature, "Herbert M. Walker." Is that your signature (showing witness)? A. My signature. I imagine that is the check I signed, otherwise it would not have my signature on it; I don't remember of seeing this typewriting matter on this

(Deposition of Herbert M. Walker.)

check at the time when I signed it. Don't remember anything being on there at the time, and reading this typewriting does not refresh my memory as to having signed it at the time. If it was there I did not see it. If I had seen it I never would have endorsed the check to get \$250, that is sure. Cannot say that the check was concealed from me at the time. I remember great haste was shown by M. Searls to get me to endorse this check, for the reason that he said he was in a great hurry and he must get this thing settled up and get right back to California. Made no inquiry of Searls as to the source of this \$250 for the reason that I had confidence in Thickens and believed that he was working in my interest as well as the other locators' interests, just as much as though he would be for anybody's interest where they were employed by him. Made no inquiry of Thickens as to the source of this money. Took it for granted that it came from McMurtry, as McMurtry had said that would be my share of the proceeds so far. [557—451] Made no inquiry to ascertain what proportion of the proceeds this \$250 was. Made no inquiry of either Searls or Thickens as to what disposition had been made of the lands which had been located. Yes, I retained this money myself. The next thing that I recall was when McMurtry came on again and gave me 1,000 shares of stock in the Pacific Oil Lands Company. He came to our office one day and said "Here is 1,000 shares of stock for you; that is part of your proceeds from the oil lands." I remember very distinctly Mr. McMurtry saying, "Under no circum-

(Deposition of Herbert M. Walker.)

stances sell or dispose of this stock; that it is going to be very valuable to you." I remember that very distinctly.

(Plaintiff's Exhibit No. 75 offered in evidence and is as follows:)

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Herbert M. Walker, September 2, 1910.)

Certificate No. 10 of the Pacific Oil Lands Company, shown me, bears my signature on the assignment. The signature on the receipt for the certificate dated September 14, 1911, looks like mine, but I don't remember ever signing it. That is my signature, however. No, at the time I received this stock from McMurtry I made no inquiries as to the assets or resources of the Pacific Company, or the number of locations made in my name, but I understood that he located property for each one of the thirty-one locators. Don't think I knew how many acres he had located for each one and had no one making inquiry of him on that subject. No, did not then know how many shares of stock, if any, McMurtry owned in this company, and I made no inquiry on that subject and had no one else do so. Yes, I then knew the state development of the lands. I believe they had [558—452] done the necessary work to do what development had to be done in order to comply with the laws of the United States. McMurtry probably told me that. No, he did not tell me specifically what happened. Don't think he then told me that oil had

(Deposition of Herbert M. Walker.)

been discovered and I did not then know what had been done under this contract of August 4, 1910 with Herrin and others and I made no inquiry as to what had become of that contract or what had been done under it. No, I did not then know of the contract which had been made subsequently supplemental to that of August 4, 1910. The next thing was the receipt of a notice of a meeting of the Board of Directors. No, between the time I received the stock of McMurtry and the receipt of this notice of directors and stockholders' meeting in 1912, I sought no advice about any of these oil lands or their condition. I was very foolish. If I had been wise I would have known a great deal more about this thing in 1910 than I have learned since, for it just so happens that I have relatives with the Standard Oil Company out there in Oakland, and if I had been wise as I am now, Mr. McMurtry would not have gotten the ratification of the power of attorney. I will say that, for I should have found out about him and more than what Mr. McMurtry told me and I believe now he was not telling me the truth, and I don't think that Thickens told me the truth. After receiving this notice of stockholder's meeting in 1912, I didn't hear anything further for sometime, then I believe I got another notice of stockholders' meeting and a little later a proxy to sign and send back which I did, and then I received a dividend of \$20. I have none of these papers.

(Plaintiff's Exhibit No. 40 shown witness.)

As near as I can remember that is one of the forms I received. [559—453]



(Deposition of Herbert M. Walker.)

(Plaintiff's Exhibit No. 76, being a proxy, dated August 12, 1913, shown witness.) I think that is the one I signed. It came to me by mail. (Said Exhibit No. 76 offered in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman.)

(Plaintiff's Exhibit No. 77 shown witness, the same being dated December 9, 1913, and is as follows:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.)

That is my signature and I undoubtedly signed it. Cannot say how it reached me.

(Plaintiff's Exhibit No. 32 shown witness.)

Don't remember of receiving a letter similar to that paper, Plaintiff's Exhibit No. 32, with the paper marked Plaintiff's Exhibit No. 77, but I undoubtedly did, for the reason that this is my signature.

Q. I invite your attention now to a check which, in substance, is as follows:

"No. 1177. San Francisco, 1/8/14. The Bank of California, National Asociation, San Francisco. Pay to the order of Herbert M. Walker, Twenty dollars. (Signed) Pacific Oil Lands Co., F. E. Harrison,—Secy-Treas. L. B. McMurtry, Vice-Pres."

Endorsed on the back and near the top edge is, "For deposit in Glen Ridge Trust Company.

(Deposition of Herbert M. Walker.)

Herbert M. Walker." Is that your signature (showing witness)? A. Yes, sir, that is my signature. [560—454]

(Plaintiff's Exhibit No. 34 shown witness.)

Don't recall receiving a similar letter; probably did, though, and destroyed it.

(Plaintiff's Exhibit No. 35 shown witness.)

Don't remember receiving a report like that Exhibit No. 35. If they sent me one I undoubtedly got it. Don't remember ever reading such a statement After receiving this dividend check, the next that I recall, as near as I can remember, then some time later—just how long I don't remember now—this Mr. Searls that I met at the bank came on and said that he represented Mr. McMurtry and that Mr. McMurtry had sent him on to take and buy back our oil stock in the Pacific Oil Lands Company and he asked me to let him have mine and he would give me \$250.00. I told him that I didn't care to dispose of my stock, for the reason that when Mr. McMurtry gave it to me in payment of some oil lands that we had located, he said to hold on to the stock, that it would prove very valuable indeed, and not to dispose of it.

I told Mr. Searls that I would rather have the dividends come along the same as I got one, as I would to sell the oil stock. Mr. Searls said that Mr. McMurtry must have the stock for the reason that the United States Government was going to bring suit against him to recover the oil lands that he had located for me, and that the reason Mr. Mc-

(Deposition of Herbert M. Walker.)

Murtry wanted this stock, as near as I can remember it, was so that he could better defend the suit of the Government as he would then have all the stock in his possession, and, having confidence in Mr. McMurtry doing the right thing by me, I therefore let Searls have this stock for \$250, but if I had not had confidence in Mr. McMurtry as well as Mr. Thickens, I would not have given his \$1,000 worth [561—455] of stock that had started to pay \$20, for \$250.

I turned this certificate over to Searls. The assignment dated March 18, 1914, on this certificate, bears my signature. I received \$250 when I surrendered it to him. No, at the time I surrendered this certificate did not know what the assets or resources of the company were. If I had had any idea I would never have surrendered. I thought by surrendering I was doing the best thing for myself on account of believing in Mr. McMurtry and trusting in what he said was so, and when he said that he could better defend the suit that the Government was going to bring to get the lands he had located back for me, it looked reasonable and therefore I let Searls have the stock for McMurtry. Then made no inquiry as to the assets or resources of the company or as to who the stockholders were. Yes, I knew before that how many locations had been made in my name, or I thought I did. Thought he had made thirty-two locations and one of them for me. Did not know exactly the area of land located for me or its state of develop-

(Deposition of Herbert M. Walker.)

ment, only that I understood that the necessary work had been done to comply with the law.

Q. At that time you had received this first report to stockholders, I believe? A. Yes, sir. Q. In reading the report over, as you said you did, did you notice the fact that they had entered into a contract in August, 1910, with the Associated Oil Company? A. Yes, I noticed it.

No, at the time I surrendered this certificate to Searls did not inquire of his as to what had been done under that contract, for the reason, that subject was not considered, for the reason that I believed by keeping the stock and getting dividends at the rate of \$20 per month that I thought I would get, was the reason I didn't want to give it up, and the only [562—456] reason I did give it up was, as I stated, so as to have Mr. McMurtry better defend the suit. No, did not then make any inquiry as to whether McMurtry was a stockholder in the company, but I presumed that he was. Did not know how many shares he owned. Did not then know that Major Hoepfner was a stockholder. After surrendering this certificate received nothing else out of this Pacific Oil Lands Company. Never owned any stock in this company, except that reported by this certificate No. 10. No, since surrendering this certificate have received nothing on account of the fact that my name was used in locations under the power of attorney by McMurtry, but I hope by the time we get through with Mr. McMurtry in the suit we are bringing against him we

(Deposition of Herbert M. Walker.)

will get our just share. No, I never had any money for the development or holding of any of these lands located in my name, nor was I ever asked to. Yes, I knew H. E. Bashore. He was employed at Nixon & Thickers when I was. Yes, I had some correspondence with him in the fall of 1916.

Q. I now hand you seven letters and a telegram, the first of which is dated September 29th, 1916; the second October 2d, 1916; the third letter October 30th, 1916; the telegram dated October 30th, 1916; the next letter dated November 2d, 1916; the next letter dated November 3d, 1916; the next letter dated November 6th, 1916; and the next letter dated November 13th, 1916. Will you please examine those and tell me whether or not each and every one of those letters are the letters you wrote on those dates to H. E. Bashore, of Harrisburg, Pennsylvania? A. May I ask where you got the letters from? Q. Yes. In reply thereto, I advise you that these letters were produced by H. E. Bashore, in San Francisco, California, at the time he was a witness on behalf of the Government in the trial of Cause [563—457] A-38, the United States vs. Thirty-Two Oil Company and others, which was then on trial before Robert S. Bean, United States District Judge. The letters were thereupon impounded with the Clerk of the Court at the request of myself as counsel for the Government. A. They all look like my letters to Bashore.

Q. I also invite your attention, Mr. Walker, to a number of letters which appear upon the stationery



(Deposition of Herbert M. Walker.)

of the Harrisburg Automobile Company, one dated October 1st, 1916, signed "Bashore," one dated October 29th, 1916, signed "H. E. Bashore"; one dated October 31, 1916, signed "H. E. Bashore"; one dated November 2d, 1916, signed "H. E. Bashore"; one dated November 4th, 1916, signed "H. E. Bashore"; one dated November 4th, 1916, signed "Bashore," and one dated November 8th, 1916, signed "H. E. B." A. These are the originals, are they not? Q. I am going to ask you if they are the original letters which you received from Mr. Bashore? A. They appear to me to be such, as I believe I gave them to Mr. Mahr to take West, when he went out there in November. Q. Will [564—458] you please examine the letters, the one from yourself to Bashore, dated September 29th, is it not? A. Yes, sir. Q. 1916, and the one from Bashore to you, dated October 1st, 1916, and tell me, if you can, who it was wrote the first of these letters in this line of correspondence? A. Well, I had just as soon answer the question, if the Government wants it. Q. Yes, I would like the answer. A. It appears to me that I wrote the first letter on the subject because I was not sure the letter would reach him, and therefore I sent a copy of the letter to Duncannon, Pennsylvania. Q. Where were you employed about April 23d or 24th, 1914? A. In 1914 I was a member of the firm of Nixon, Walker & Tracy.

Mr. HALL.—I would like to, at this point, read in the record Government's Exhibit No. 77, which is

(Deposition of Herbert M. Walker.)

the consent signed by the witness, Herbert M. Walker.

(Said Exhibit No. 77 read into evidence, the same being similar in form to Plaintiff's Exhibit No. 6, dated December 9, 1913, and signed Herbert M. Walker.)

Yes, I have a faint recollection of some Government agent coming to my office about the 23d or 24th of April, 1914, but I don't know whether I spoke to him or whether he spoke to me.

Q. To refresh your recollection, didn't Mr. Williamson call on you, either on April 23d or April 24th, 1914, and did you not have a conversation with him, at which was Mr. Wilson, Mr. Mahr, Mr. Metz, Mr. Wilson and yourself? A. Do you want the question answered? Q. To refresh your recollection, didn't Mr. Williamson on the 23d or the 24th of April, 1914, in the office of Nixon, Walker & Tracy, ask you why [565—459] you signed this power of attorney, and did you not tell him that you signed it as a favor to Mr. Thickers, by whom you were employed at that time it was signed? A. No, I don't remember.

I don't remember his speaking to me on the subject. Q. Did you not in that same conversation state to Mr. Williamson that you had received the \$250 in 1910, and the \$20 dividend in 1914, and that the \$250 for the stock was just a short time prior to that conversation? A. No, I don't remember ever talking to Mr. Williamson on this subject at all. Q. Did you not say to him in that same

(Deposition of Herbert M. Walker.)

conversation and at that same time and place, that Mr. Searls was still in the city and that he might talk to Mr. Searls about the matter? A. My answer is the same. Q. Did you not tell Mr. Williamson at the same time and place and in the same conversation that you had received this money from Mr. McMurtry and that you were thoroughly satisfied with the transaction inasmuch as it was in the nature of a gift or a pickup? A. No. Q. Or a find, or words to that effect? A. No, I don't remember talking to Mr. Williamson at all on the subject, no recollection of it. Q. Is it not also true that at this time and place Mr. Williamson asked you to give him an affidavit in regard to the matter and that you declined and said that you would see Mr. Randall, an attorney, before giving any written statement? A. And I answer that I don't remember talking to Mr. Williamson [566—460] on this subject at all. Q. Is it not also a fact that you did see Mr. Randall within a very short time after the 23d or the 24th of April, 1914, and that within a day or so thereafter Mr. Williamson again called upon you at the same place and you declined to sign the affidavit? A. No, I don't remember any of this at all. Q. Will you say that this conversation that I have just been asking you about did not occur, or that you did not remember it? A. I say that I do not remember talking to Mr. Williamson about this, or talking to Mr. Randall about it, that I remember. Q. What is your best impression about this conversation, as to whether it did or did not occur? A. I

(Deposition of Herbert M. Walker.)

believe it did not occur. Mr. HALL.—That is all. I will now ask that the letters of Mr. Walker to Mr. Bashore and Mr. Bashore to Mr. Walker, heretofore referred to, be now extended into the record.

“NIXON, WALKER & TRACY,

Everett Building,

45 East 17th Street, New York.

Sept. 29th, 1916.

Mr. H. E. Bashore,

Harrisburg, Pa.

My dear Heb:

I do not know whether this letter will reach you or not, but am taking a chance.

It appears as though McMurtry and Thickers need us again regarding the property we located for them in California. There is a lawyer on from California now who has been in to see us all. As near as we can find out this property has been purchased by the Standard Oil Company and the Government is bringing suit [567—461] against either the Standard Oil Company or McMurtry to get the property back as Government Lands again.

The property was sold for a very large sum and where we did get a few dollars out of it we are of the opinion here that if we do hold out we could get quite a sum.

None of us here are going to do anything to further the interest of McMurtry in this transaction and are going to hold out to see the outcome of same. We believe that if we do we might get a nice bunch of money out of the property or if

we do not get it, the Government will get the land back, and as the Standard Oil are *interest* in it, it appears as though we might be able to do something.

They need all the locators as we understand it, and we do not know whether you have heard anything recently regarding this matter or not, but if you get this letter kindly write me and we will post you as to what we know.

Yours very truly,,  
(Signed) H. M. WALKER.

HMW/H.

(In pencil:) Copy sent to Duncannon.

(Letter-head.)

“NIXON, WALKER & TRACY,  
Everett Building,  
45 East 17th Street.  
New York.

October 2, 1916.

Mr. H. E. Bashore,  
c/o Harrisburg Automobile Co.,  
Harrisburg, Pa.

My Dear Heb:

Your letter of October 1st received, and I was indeed very glad to receive same. I note that a Government agent has been to interview you and no doubt, if you have not heard from Mr. Thickens, you will shortly. We have been in touch with the eight locators [568—462] and they have all agreed not to do anything more to further the interests of Mr. McMurtry at the present time. As far as we can find out, he has made, or is in a position to



make a large sum of money out of this property. We all feel that we are humbugged a bit at the start in obtaining our signatures and that we fell very much too easily when we had the first \$250.00 offered us.

I will keep you posted if any developments arise. I am very glad indeed that you have been doing so well in the automobile business and the increase that you have shown in the business should certainly be very gratifying to you.

Fred is away to-day, but I will show him your letter upon his return and I know he will be very interested in reading same.

I also note that you intend to visit New York some time this Fall or Winter and I trust that you will favor us with a call when here.

All the boys join with me in sending their best regards to you. Best wishes for your continued success, I am,

Yours very truly,  
(Signed) BERT."

(Letter-head)  
"NIXON, WALKER & TRACY,  
Everett Building,  
45 East 17th Street,  
New York.

October 30th, 1916.

Mr. H. E. Bashore,  
Harrisburg, Pa.

Dear Heb:

I received your letter of the 29th, and I wired you

to-day not to do anything regarding the telegram that you received from the Assistant Attorney General of the United States Government until you received letter. [569—463]

Beg to advise that as far as we can find out the McMurtry interests are still in New York. They have met with no success in obtaining any of the locators that were in our office at the time to do anything to further their interest. We are all together on the subject and it appears that if we refuse to do anything for the McMurtry interests that we can get them to 'come across' with a nice sum, provided we would appear for them. Of course, if any of us appeared as a witness for the United States Government, and any such witnesses were not satisfied with the deal that they got from McMurtry, it would mean that the land that we located, and which has since been sold to the Standard Oil Company, would revert again to the Government. This is what the McMurtry interests want to prevent.

Mr. Mahr, who as you know, is a good fighter, expects to see the Thickens & McMurtry lawyer either this afternoon or tomorrow, and is going to put up to them in very strong terms that unless the McMurtry interests want to 'come across' with a *some* that is acceptable to all of us that someone *of will* appears as a Government witness against them. We think in this manner we may be able to force their hand.

In talking this matter over today with a number of the boys, we would dislike very much to stand in

the way of your getting a free trip to California, but we believe if you would hold off a few days until we can get something concrete that it might pay you a good deal better to go to California as a witness for yourself rather than for the Government.

We will keep you posted on everything that is done, and you will hear from us in time to give the Government an answer, so that if you should decide that you wanted to go as a Government witness you could arrange it so you could be there by November 22nd. [570—464]

With kindest regards I am,

Yours very sincerely,

(Signed) BERT.

HMW/H.

P. S.—Since writing you, Mr. Mahr has had Mr. Thickens on the telephone and has told him very plainly that ten of the locators, whom he and I represent will do nothing to further the interests of Mr. McMurtry unless Mr. McMurtry 'comes across,' with what we consider our just share of the proceeds of the sale of the property. One half of the property that we located was sold for \$1,370,000.00 and by rights, we as locators, were entitled to 1/32 of this.

As Mr. Mahr told Mr. Thickens we did not expect to get 1/32, but we were entitled to a good deal better share of same than the few hundred dollars that were given us, and that we would not do anything further to further the interests of Mr. McMurtry unless they wanted to meet us the way that we thought they should. He has asked us not to do

anything to further the interests of the Government and stated that he would telegraph to San Francisco at once regarding our position and that we should hear from him in two or three days time. Just as soon as we hear anything further from Mr. Thickens I will advise you."

(Postal Telegraph Blank.)

"New York NY Oct 30 1916.

P. E. Basehore, care Harrisburg Auto Co. 3rd & Hamilton, Harrisburg, Pa. Do not do anything until receive letter.

H. M. WALKER."

(Letter-head)

"NIXON, WALKER & TRACY,  
Everett Building,  
45 East 17th Street,  
New York.

November 2, 1916. [571—465]

Mr. H. E. Bashore,  
c/o The Harrisburg Automobile Co.,  
Harrisburg, Pa.

My dear Heb:

Your letter received, and we expect to wire you tomorrow what to do about advising the government that you will appear for them as a witness.

Some of the boys in the office today received from Mr. Helms who is in San Francisco and represents Mr. McMurtry, the following telegram:

'Your attendance required November 20th. Transportation and advance expenses arranged through

New York Central. Call at office #1216 Broadway and arrange routing here direct, returning at your pleasure. Compensation for loss of time guaranteed by principals here and will be arranged on arrival. Wire answer c/o Palace Hotel.'

We have an appointment to see Mr. Thickens tomorrow and we expect to have some definite information from him as to what the McMurtry interests intend to do. We will then advise you by wire whether it will be best for you to appear as a witness for the McMurtry interests or the Government.

With kindest regards, I am,

Yours very truly,  
(Sgd.) BERT.'

(Letter-head)

“NIXON, WALKER & TRACY,  
Everett Building,  
45 East 17th Street,  
New York.

November 3, 1916.

Mr. H. E. Bashore,  
c/o The Harrisburg Automobile Co.,  
Harrisburg, Pa.

My dear Heb: [572—466]

I received your letter of November 2nd and I telegraphed you this morning, as follows:

'Have made arrangements for you to go with rest of the boys as McMurtry witness. Traveling expenses all paid and generous offer of our just dividends if our case is won. Wire government you cannot



go. Say nothing else. Arrange to come to New York in a few days. See letter."

Beg to advise that this morning Mr. Mahr, Mr. Metz and myself met Mr. Thickens at the McAlpin Hotel. We told him that unless the McMurtry interests decided to come across with a fair portion to the thirty-two locators that eight *witness* that they want to go to California would not go, unless they went as government witnesses.

Mr. Thickens showed us two telegrams that he had received from Mr. McMurtry in San Francisco in which he stated that we were needed very badly for their side and that they would pay all traveling expenses to San Francisco, with a liberal allowance for incidentals. They would also pay any amount that any of the boys lost for loss of time away from business.

We told Mr. Thickens that this was all very well, but that we must have some definite idea as to what we, as locators, would get out of same, provided the suit was won by the McMurtry interests.

Mr. Thickens wanted to know what we thought we were entitled to, and we told him that it had been agreed upon to sell the property for somewhere around two million dollars, and the thirty-two locators of this certain section were entitled to at least five hundred thousand dollars. The McMurtry interests could then have the balance. He laughed at this proposition and we told him it was nothing to joke about, that we felt that the [573—467] thirty-two locators were entitled to this amount.

He stated that that would be over fifteen thousand dollars a piece, and we told him that was about the amount we felt that we were entitled to.

He has wired Mr. McMurtry what we have said and expects an answer by wire from him either late this afternoon or tomorrow morning.

Where, of course, we may not get this amount, we are of one mind that we are going to get something pretty good out of it, as our just share, provided the suit is won by the McMurtry interests. We have also had a lawyer's advice on this subject and he tells us that it can be so arranged before any of the boys go that the amount that is agreed upon that we are to get will be in New York before they go, so that if the suit is won there will be no question, but what the amount will be paid.

I trust that you have decided to go as a McMurtry witness for the reason that if the suit is won, you will all benefit alike. If the suit is lost, you will have all your expenses paid to San Francisco and return, with a liberal allowance for the loss of time, any way.

Of course, if the government should win the case, no one would get any thing and if the McMurtry interests win, I believe that we are sure to come in for some amount, but as stated, I cannot say definitely what it will be now. The money is in New York now to pay all traveling expenses for the boys who have said they will go. Those who have said they will go are, Eugene Metz, Walter Wilson, William Keenan, Joe Farrell, Will Mahr and we

took the liberty of saying that we believed you would go as a McMurtry witness. [574—468]

We trust that we did not overstep ourselves in saying this for you. We believe it would be advisable if you could arrange to come to New York the first of the week. Of course, we will be closed on Tuesday, so if you cannot come Monday make it Wednesday.

Mr. Thickers will pay your expenses from Harrisburg, to New York, just the same as he will your expenses to San Francisco.

I believe that we have acted for the best interests of all concerned in this matter, and trust that you will agree with me.

Hoping to see you soon, I am,

Yours very truly,

(Signed) BERT."

(Letter-head)

"NIXON, WALKER & TRACY,

Everett Building,

45 East 17th Street,

New York.

Nov. 6th, 1916.

Mr. H. E. Bashore,

c/o Harrisburg, Pa.

My dear Heb:

I received your letter of November 5th, and was indeed surprised that you had decided that you think it best to go as a government witness. If you go as a government witness you can only tell the truth, which is all that is wanted of you if you

go as a witness for McMurtry. All that the government will want to know is were you satisfied. It appears that Mr. Thickens has a letter in his possession from you written when you were with Henry Sonneborn & Company, in which you stated [575—469] that you were very much pleased with the amount that you received, that that you were surprised you received so much, which would certainly go to show that you were satisfied with the transaction and this is all that you would be expected to testify to except that you were an original locator.

It appears to us that your only chance, as well as the rest of us, of getting a fair dividend, that we here believe we were entitled to, is for you to go as a McMurtry witness with the rest of the boys from here. If this is done it really appears to us as though a good portion of our just receipts will come back.

We know that you wish to make the trip to California, but we believe that it is wiser for you and more to your own personal interest to go as a friendly witness to the McMurtry interest than otherwise.

We are expecting a long letter from San Francisco Wednesday or Thursday that should have a great deal of information in it, and, as stated, believe that it would be best for you to go with our boys. Of course, you can do as you think best.

Kindly advise whether we can count on you being with us or not, for as we wrote you personally

all of the money for expenses is in New York now.

Yours very truly,  
HMW/H. (Signed) BERT."

(Letter-head)

"NIXON, WALKER & TRACY,  
Everett Building,  
45 East 17th Street,  
New York.

November 13, 1916.

Mr. H. E. Bashore,  
Harrisburg, Pa.

Dear Heb: [576—470]

Your favor of the 8th received and I am indeed *very that* you have been laid up with a bad cold.

Nothing new has developed, as yet, except that the trial has been postponed for one week from November 20th.

Mr. Thickers has not as yet received the letter that he stated has been forwarded, so we have nothing new to report. Just as soon as we hear any thing of interest, we will advise you without delay.

Trusting that by this time you have gotten the better of your cold, I am with kindest regards,

Yours very truly,  
BERT."



(Letter-head)

“HARRISBURG AUTOMOBILE COMPANY,  
INC.

Harrisburg, Pa., Oct. 1, 1916.

H. M. Walker,  
New York.

Dear Bert:

Your letter reached me yesterday at the same old stand where I have been plugging, to my dear friends in New York, as a sort of a ‘Rip Van Winkle.’

Was very glad that you put me wise to the line of dope with reference to the McMurtry-Thickens deal. At the time I signed that last paper sent me I was suspicious and if you remember I wrote Fred on the subject but when you get something for nothing there was not much use putting up a fight so I fell in line with the rest of you boys.

About two weeks ago there was a government detective from California interview me as to the why’s and wherefore’s and I learned at that time that the land had been disposed of for [577—471] quite a nice sum. Also that the government would try to get it back but he said the evidence for the government was very slim because McMurtry had lived up to the requirements. He wanted me to give a signed statement which I refused to do. I still possess all the correspondence received from Thickens on the subject and it may prove of some assistance in the matter because I was one of the few that were written to. Also have a financial statement sent

me by the Oil Co. which condition at that time was very flattering. I am willing to give any assistance I can to help you fellows along in the matter but look out that that wise lawyer from California don't clean us all. He is out for what he can get out of it. You know we 'rubes' out here are sort of skeptical. Keep me posted.

It seems like old times to get a few lines from you and many, many times I have wondered how you all were getting along but too busy in my own line to take a few minutes to write. I have been devoting every ounce of energy to make this business a success and will give you a little idea of what has been done so you can judge for yourself whether I am a has been or not. In 1913 we sold

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200 cars, 1914, 300; 1915, ~~450~~; 1916, 700 and our contract for the next twelve months is 75 cars per month or practically 1000 cars. We have 50 dealers in this state buying cars through this office and carrying \$15,000 worth of parts on hand. We handle nothing but the 'REO' Pleasure Cars and Trucks.' Many changes have been necessary to handle this rapid increase in business which of course you cannot realize on paper, you have to see our plant to figure that out, so H. E. B. has had his hands full but it is a great pleasure to watch success succeed. This winter I hope to make a short trip over your way and it would afford me much pleasure to mingle with you all again for awhile. [578—472] Give my kindest regards to Fred and the

other boys and my best wishes for your own success.  
Keep me advised.

Yours sincerely,  
(Signed) BASHORE."

(Letter-head)

"HARRISBURG AUTOMOBILE COMPANY,  
INC.

Harrisburg, Pa., Oct. 29, 1916.

Dear Bert:

I just received the following telegram from San Francisco. 'Will you come to San Francisco, Cal., and appear as witness for United States on November Twenty-second if fees and mileage are paid by the Government at rate of three dollars per day while absent from your city and five cents per mile each way. Will advance railroad fare if desired. Answer collect government rate. Signed Hall, Special Assistant to Attorney General.'

Think this over and wire me at my expense if my appearing there is going to interfere in any way with the future prospects of the boys getting what belongs to them as outlined in your recent letter. I haven't had my vacation as yet and this trip would be a treat to me but I do not want to do anything that is going to prove our chances a failure. I am writing this in haste—wire me your opinion and I will guide myself accordingly. With the same good wishes, remain,

Yours sincerely,  
H. E. BASHORE."

(Letter-head)

“HARRISBURG AUTOMOBILE COMPANY,  
INC.

Harrisburg, Pa., Oct. 31, 1916.

Dear Bert:

Received your wire yesterday and your letter this [579—473] morning, which was digested thoroughly and will obey your command ‘rest arms’ until further advised. If Billy Mahr, the wonderful orator, cannot pull off that little stunt with Thickens, special wise guy, for McMurtry, the king pin of the oil fields, then your ‘hayseed’ friend will have to go all the way to San Francisco and talk dutch to them; cannot understand why they selected me any way, I am not half as good looking as you fellows, don’t possess the up-to-date business methods as you New Yorkers, and worst of all, three weeks away from this ere village, why I would be be an entire stranger when I got home. The more I think of the whole thing I never dreamed that McMurtry or Thickens could pull such a thing over on you poor ‘boobs’ who call yourselves ‘New Yorkers.’ Laying all jokes aside—just keep me posted and if there is nothing doing why then I am going to take that joy ride all right but will do nothing until you advise me further which must be by Saturday of this week. Will have to wire then to get check here in time for car fare. That will be all for today so will close with best regards to the boys and yourself.

Yours sincerely,  
H. E. BASHORE.”

(Letter-head)

“HARRISBURG AUTOMOBILE COMPANY,  
INC.

Harrisburg, Pa., Nov. 2, 1916.

Dear Bert:

Just received another wire from San Francisco asking me to give them my decision tomorrow, Friday, so if I do not hear from you by tomorrow evening will send a night wire that I will be there on November 20th. McMurtry has had ample time to know what he is going to do and you fellows have already extended him [580—474] more courtesies than he is entitled to. Personally, I do not think he will do anything, simply keep you guessing until it is too late, as he thinks, for you to get out there. Will not take up any more of your time today. If they come across and you figure the amount enough for me to remain at home wire me accordingly. With best wishes, remain,

Yours sincerely,

H. E. BASHORE.”

(Letter-head)

“HARRISBURG AUTOMOBILE COM-  
PANY, INC.

Harrisburg, Pa., Nov. 4, 1916.

H. M. Walker,  
New York.

Dear Bert:

Received your wire and both letters which have been noted carefully. I have given this proposition



serious consideration for the past week, been in consultation with my lawyer several times with the result that his advice and my conscience tell me to go to San Francisco as a witness for the United States Government. At this time it would be impossible for me to come to New York next week on account of planning for the big trip but if Mr. Thickens wants to see me he knows where I am. That is all I will say at this time.

Yours very truly,

(Signed) H. E. BASHORE."

(Letter-head)

"HARRISBURG AUTOMOBILE COMPANY, INC.

Harrisburg, Pa., Nov. 4, 1916.

Dear Bert:

The enclosed letter is rather short but I expect that you will show it to Thickens and that is why I did not say any [581—475] more. The McMurtry interests cannot afford to have me go there as a witness for the U. S. Government but that is up to them. My decision is based on good grounds and regret cannot put same on paper at this time. Expect to leave here about the 14th but have not decided as yet whether I will go via Chicago or Washington. Let me know the plans of the boys, may be able to arrange to go with them. Let me know the final answer about the \$15,000 proposition. Will not wire my final answer to San Francisco until Wednesday of next week and that will give Thick-

(Deposition of Herbert M. Walker.)

ens a chance if he wants it. Keep me posted.

Yours sincerely,

(Signed) H. E. BASHORE."

(Letter-head)

"HARRISBURG AUTOMOBILE COMPANY,  
Harrisburg, Pa., Nov. 8, 1916.

Dear Bert:

Have been laid up with a bad cold since Saturday and that is why you have not heard from me more promptly. Unless I feel a whole lot better than I do now I would not take that trip out there under any circumstances. Did not expect that my last letter would cause any disappointment among you all but now see how you read it. I know that you are conscientious in all that you say and have done and firmly believe that every move has been well thought over and as far as you know for the best interest of all concerned. While we may have been satisfied we now know and feel that the McMurtry interests have made 'goats' out of us all—with that in mind I cannot warm up to any line of argument that they are going to hand out—I might be wrong but that is how I feel about it. On the other hand they have never directly requested me to act as their witness, if they really wanted me they could have very easily dealt with me direct [582—476] which would have been much better than through you. If I should go as their witness I would feel like a 'puppy dog.' Those are my frank sentiments. I don't want you to think that I have any desire to be

(Deposition of Herbert M. Walker.)

arbitrary nor do I want to do anything that is going to mar your personal interests in this matter and I have been just as conscientious about everything as you have. The Government have asked me to be their witness, they have told me what they would do in the way of remuneration, that much I know. If I should decide to act as their witness I am simply going to tell the truth and nothing else—I have no desire to fight this proposition or start anything—and my lawyer claims that my being a witness for the Government under those circumstances would not in any way injure our future possibilities if McMurtry wins the suit. I remembered very well what I had written to Thickens, in fact I have all the correspondence but it was no intention of mine to use this unless forced to do so. By the time you get this letter you will have that long letter from San Francisco and I would appreciate your advising me to contents. It may help me to decide this knotty problem. In the meantime I will patiently wait. With kindest regards, remain,

Yours very truly,

H. E. B.”

Cross-examination.

Am forty-one years of age. Was with Nixon & Thickens during its existence four or five years. Prior to that was salesman with the American Woolen Company. Came to New York in the spring of 1902.

(Plaintiff's Exhibit No. 4 shown witness.)

Yes, I have now read it and notice that I granted

(Deposition of Herbert M. Walker.)

power to Mr. [583—477] McMurtry to locate mining lands in any place in the United States and develop them. Yes, I notice also that it gives him the right to sell and mortgage the lands that he might locate, or lease them or any part of them. Yes, I undoubtedly read it when I signed it. No, there was nothing then said by Thickers to me on the subject of lending my name so that McMurtry could locate lands for his own benefit or for the benefit of any person but himself nor was there any insinuation to that effect, nor any agreement that McMurtry would have any interest in any lands that might be located in my name, nor did Thickers, McMurtry or any of the boys themselves who signed the power tell me that any suggestions of that kind had been made to them. No, there was no suggestion or statement made to me that in the event lands were located in my name I would be expected to transfer any interest in the lands to any other firm, corporation or person or that in fact the lands or any part of them would belong to McMurtry or anybody else. No, there was no suggestion or understanding made to me by Thickers, McMurtry or anybody else, that I was to be paid for the use of my name as a locator. No, I never modified, set aside or repudiated or attempted so to do this power of attorney.

(Plaintiff's Exhibit No. 75 shown witness.)

Yes, I read that ratification before signing. I sent it, as near as I can remember, to a lawyer to go over and see if he had any suggestions to make

(Deposition of Herbert M. Walker.)

Yes, we associates there in the office talked it over about consulting a lawyer. The associates were Mahr, Metz, Wilson and myself. Don't think Romaine and Keenan were with us at that time. No, I never heard any statement among the boys that it didn't make a particle of difference about the matter that they were not interested in it and that they were lending their names to McMurtry or Thickers. Yes, I then knew [584—478] that this original power of attorney had been filed.

Q. You also knew from the time of the first reading of the power of attorney that action had been taken under it, that he had located lands, and that they were now asking you to ratify and confirm that power of attorney? A. I did know that, and the reason we had a lawyer go over this ratification was so that we would not, so that I would not sign anything that I did not think was right to sign, and therefore I had the word "lawfully" inserted.

No, McMurtry did not tell me that this ratification was a matter of form. He said that the reason he wanted a ratification was because he had sold some of the property and that in order to work the balance of the property he must have some money to continue that. Yes, I believe he said something to the effect that the lawyers for the persons with whom he had made contracts for you before they would proceed with the matter wanted to be sure that the people who had given the power of attorney were alive and would ratify it and the contracts. No, I didn't know that he had made contracts to dis-



(Deposition of Herbert M. Walker.)

pose of the property. He didn't tell us the extent of his contracts. Yes, I understood then that it was necessary to do this in order to develop the rest of the lands, but whatever would come out of this contract was problematical and would depend on whether oil was found and how much oil was found. No, I did not then have any intention of cheating or defrauding anybody in connection with lands which had been located in my name and never had any intention of permitting the use of my name for the purpose of avoiding the provision of any law, and no such suggestion was ever made to me. No, no person ever attempted to influence my testimony in this case, and prior to April 1, 1917, I never [585—479] talked with any of the attorneys in this case. I was not told that this check for \$250 upon which I put my name or the \$250 from Searls September 26, 1910, was a gift or that it was for the trouble I had in signing my name to the ratification or the power of attorney. Yes, I understood that these moneys were coming out of the sale of my part of the land located in my name. Yes, I understood that the money came from this contract which I had ratified.

Redirect Examination.

Q. Didn't Mr. McMurtry tell you either at the time he asked you to sign the ratification, or at the time he gave you the shares of stock in the corporation, that he had conveyed part of the lands which had been located in your name to Mr. H. C. Stratton, in 1909, in payment of debts that he, McMurtry,

(Deposition of Herbert M. Walker.)

or any other person had contracted in the developing and holding of the lands at a time when they were held by the so-called Chicago group of locators? A. I never remember any such occurrence.

Yes, since the signing of this ratification we boys have talked over the question as to whether McMurtry had cheated us. No, there has been no talk among us that McMurtry and Thickers used our names for the purpose of defrauding the government or these defendants in this case. Yes, I do feel that I have been defrauded out of money that should have lawfully come to me—from the location of these properties. I have no recollection of ever meeting any attorney of the Government in any respect or any representative of any of these defendants prior to April, 1917, unless Mr. Helm is such a representative. Mr. Helm called on me I think September, 1916, but in no way did he ever mention how I was to testify, or ask about the facts. Never discussed [586—480] anything about it. He asked me if I would go to San Francisco if I were called as a witness.

Q. You testified on cross-examination that at various times, at the time of signing the ratification, receiving the first \$250. and at the time of executing the power of attorney, there was no suggestion made to you that your names were to be used or had been used to defraud the Government or the defendants or anybody. I now invite your attention to a copy of your letter of October 2d, 1916, addressed to Mr.

(Deposition of Herbert M. Walker.)

H. E. Bashore, Harrisburg Automobile Company, Harrisburg, Pennsylvania, in which you state as follows:

“As far as we can find out, he has made, or is in a position to make a large sum of money out of this property. We all feel that we were humbugged a bit at the start in obtaining our signatures, and that we fell very much too easily when we had the first \$250 offered us.”

When was it that you first felt that you had been humbugged a bit at the start in obtaining your signatures, and that you had fallen very much too easily when you had the first \$250 offered to you?

A. Why, along in August or September, 1916, I began to feel that we had not been truly informed by Mr. McMurtry of the conditions that existed there, as to what moneys would accrue from this property when we gave him the ratification. Q. From what

source did you acquire the information which engendered that feeling in you? A. Why, what little

we had really been able to learn about the moneys that had come from this property that was located for us or for me. Q. From whom or in what manner

did you learn this little about the money that had come from the properties so located? A. I cannot

answer that because it was, we never really got or I never really [587—481] got to the facts in

this thing until the four or five locators went to San Francisco and learned something out there. Q. But

this letter was written on October 2d, 1916, and the locators didn't go to San Francisco, according to

(Deposition of Herbert M. Walker.)

their testimony, until in November, 1916. I want to know now from whom you received the information which engendered this belief that you had not been, to use the language of the letter "that you were humbugged a bit at the start in obtaining your signatures"? A. In obtaining my signature, means to the ratification of the power of attorney, in that letter. That is what my letter refers to. Q. Will you now tell me from what source you received the information that engendered in you the belief or the feeling that you were humbugged a bit at the start in obtaining your signatures, and that you fell very much too easily when you had the first \$250 offered you? A. Is there any letter previous to that? Let me see if I can refresh my memory. Q. You may have them all (handing witness letters). A. I will answer now. The WITNESS.—(Continuing.) Why, I believe that I must have gotten my information from some of the other locators who had some conversation with Mr. Helm or Mr. Thickens. [588—482]

**Deposition of Charles W. Thorn, for Plaintiff.**

CHARLES W. THORN, called on behalf of the plaintiff April 26, 1917, testified by deposition as follows:

Reside at Middletown, New York. Am employed by the J. M. Pitkin & Company, pure food products. Never lived west of the Mississippi River, and prior to this occasion never acquired title to any public lands outside of the transactions here involved. In

(Deposition of Charles W. Thorn.)

1906 and 1907, lived in Yonkers, New York. Was secretary of the Empire Oil and Development Company from about the fall of 1906, about which time I met Mr. McMurtry, who was engaged in promoting oil property. He formed the Great California Oil & Development Company of which I sold stock. It went out of business in about the fall of 1906, just before the Empire Company was organized. I was not a stockholder in that company. McMurtry was president. I never had any occasion to examine the books of that company to ascertain the assets or resources. Was told by McMurtry, but don't remember what they were. Understood he held the lands under option in California—in the Midway Field, Kern County. Don't know what became of the books of that company. The Empire Company organized three weeks after the Great California Company went out of existence. At the time the Empire Company was organized I had charge of the books. The office was at No. 299 Broadway, the same place that the California Company had been located. McMurtry was president of the Empire Company; Harder, Vice-president; Searls, Treasurer; and I was secretary and Mr. Lewis was an officer. Neither Searls, Harder nor Lewis were officers of the California Company. Yes, from its organization up to December 31, 1907, I knew what the assets of the Empire Company [589—483] were. It held oil lands in the state of California under option. I knew at the time with whom the options were, but the name now slips my memory.



(Deposition of Charles W. Thorn.)

Yes, Charles Ladd of Portland, Oregon, is the name I had in mind as the man from whom McMurtry held the option. As I remember it now, Ladd was president of the Oregon Midway Oil Company, which company was in some way connected with the option. I know the Midway Oregon name was used. The lands were in the Midway District, Kern County. I knew at the time, but cannot now remember the particular locations or descriptions of the lands. Don't think I knew the names of the locations. Don't recall the mining claims "Blow-out" or "Alice" in this connection. Yes, I knew the Stratton Water Company was included in the option, the land where the Stratton Water Company was located. To the best of my memory there was no development on such lands worth being done. There was someone on the property, but what was being done I don't know. No, as secretary, I received no reports of drilling of oil wells on the land held in option. During 1906 and 1907 saw McMurtry nearly every day and discussed the oil situation in California.

Q. During that time, and particularly during the year 1907, did you have any talk with Mr. McMurtry about any locations that had been made by people who resided in Chicago, and the vicinity of Chicago, Illinois? A. Why, I remember that the fact was mentioned, but I don't remember the conversation. Q. Did the Empire Oil & Development Company have anything to do with or did it have any control over any lands located by people who

(Deposition of Charles W. Thorn.)

resided in Chicago or near Chicago? [590—484]

A. I don't remember. Remember the subject of Chicago locations being mentioned in my talk with McMurtry. The affairs of the Empire Company were wound up in the first part of 1909.

Q. The records of Kern County, California, disclose that there is recorded a power of attorney which purports to have been executed by C. W. Thorn (Plaintiff's Exhibit No. 7 stated). Are you the C. W. Thorn whose name appears there?  
A. I am.

I executed the same at 299 Broadway. Of those who signed before I did I knew Frank D. Taylor. Think he was requested by Edward L. Powell to sign. Think McMurtry requested Powell. Presume I had some conversation with Taylor and Powell but don't recall what it was. Knew Daniel W. Darling. Asked him to sign the power of attorney. He had previously talked with McMurtry. Don't recall any discussion with Darling at the time I asked him to sign. Also asked J. W. Pentz to sign. Explained to him the placer mining laws. Told him I knew McMurtry a long time and believed he was a man who understood the oil situation in California, and that I had every confidence to believe that he would locate to the best of our interests. Believe I presented the power to S. H. Freeman to sign. Presume I talked with him, but he had talked with McMurtry and understood the situation. There had been some talk regarding McMurtry going back to California, and these men

(Deposition of Charles W. Thorn.)

wanted him to locate lands for us. Yes, some of these had invested money in the Empire Company and had no prospects of getting it back. Thickens looked after getting the names signed to one of the powers of attorney. I was present on several occasions when McMurtry had conversation with Thickens concerning these oil matters. I heard McMurtry ask Thickens, Searls and myself if [591—485] we could get some of our friends to sign and I told him yes. All I remember is that he had made up his mind to go West and had secured the blanks, and if we would sign them and get some of our friends to sign them he would get locations for us. This conversation occurred a few days before the powers were actually signed. McMurtry offered to locate lands for us and we accepted the offer. No, I don't remember that McMurtry's leaving New York had anything to do with the affairs of the Empire Oil Company. Of those who signed the power of attorney, Searls, Harder, Taylor, Powell, Bashore, Romaine and F. S. Thorn had been interested in the Empire Company, and maybe others that I don't recall. Yes, I believe George A. Meinecke was also. I also asked Banks to sign. Freeman asked Chapman to sign. Took him to his place of business and after Freeman introduced us and left Chapman said that Freeman had led him to believe there would be millions as a result of becoming a locator, and I told him that I didn't know whether there would be millions from it or not, but there might be something in it, as it all depended whether oil was discovered.

(Deposition of Charles W. Thorn.)

I also asked Richmond to sign. Yes, think he was a stockholder in the Empire Company. Also asked Frederick S. Thorn, who was my brother and was a stockholder in the Empire Company. Also asked Harry B. Thorn, who is my son. Told him that McMurtry was going back west and had offered to make some locations for us and asked him if he would like to become one of the locators. He wanted to know "what there was in it" and I told him that depended on the development of any land that was located; that we believed that there was land out there where there was oil and if oil was located there would probably be considerable into it. I explained to each and every one that I asked the placer mining [592—486] laws, and had them read the power of attorney, with the possible exception of Richmond, who understood the placer mining laws. After these powers were signed and McMurtry left, I continued looking after the office of the Empire Company. No, no stock was sold after December, 1907. We had negotiations on for raising funds to develop the property with. I may have made inquiries of McMurtry during the year 1908, as to what was done under the power of attorney, but I don't remember. No, I have none of the correspondence which may have passed between us during that time. The letters I sent him during that time were destroyed, I believe, when we closed the office in February or March, 1909. No, between the time McMurtry left in 1907 and the time we closed the office in February or March, 1909, the Empire Company did not ac-

(Deposition of Charles W. Thorn.)

quire, either by purchase or lease or option or in any way, the right to possession of any oil lands; not to my knowledge, or carry on any development of any oil lands in California to my knowledge. I learned during 1908 that McMurtry had located some lands in San Benito County under the power of attorney. Think I then knew how many locations were made, but don't remember now. It seems as though it was something like 10,000 acres that was located. The first time I learned that McMurtry had located lands in Kern County under the power of attorney was in 1910, about August. When the Empire Company went out of business, I packed up the books and records and shipped them to McMurtry at San Francisco. Don't recall of hearing during 1909 about locations being made in the Midway Field under the power of attorney. No, prior to August 1, 1910, I made no inquiry as to what locations McMurtry had made in Kern County under the power. Did not know he was going to make any in that County. McMurtry told me in August, 1910, that he had. [593—487] Told me the sections and that in order to make discovery had sold part of the lands with the understanding that the party would do the development work and secure patents to protect the balance, and that he also had made a contract with Herrin and others, which he explained was the Associated Oil Company, for the balance of the property for \$2,200,000, to be paid for out of the production at the rate of twenty cents per barrel. Don't remember all the sections he



(Deposition of Charles W. Thorn.)

mentioned. Recall sections 32, 34, 36 and 28. Don't remember that he mentioned section 22. He told me my name appeared as a locator on one of the quarters in each section. I was at that time asked to sign the ratification (Plaintiff's Exhibit No. 78 shown witness). Yes, that is the ratification I executed. I remember McMurtry told me the reason he wanted that ratification was that Herrin of the Associated Oil Company wanted to be sure, wanted McMurtry to get the powers of attorney ratified to make sure that we were real live locators. He was to receive \$2,200,000 for the land that he had sold. Said he had received an option payment on the contract and that it was not enough to go around and make the size of payment that he wanted to make to each of the locators on it, but it would go part way around and he asked me if I wanted the money then, and I told him I did and he said he was going to give each locator \$250, but that it would not go all the way around. Think he said the amount he had received, but I don't remember. He paid part of the locators \$250 then and the remainder \$250 in 1911. From the money received under this contract of August 4, 1910, I was told that by McMurtry in 1910. This check No. 102, dated August 25, 1910, on the Second National Bank of the City of New York, for \$250 is the one given me by McMurtry, and the typewriting on the back thereof was there when I read it. Searls presented [594—488] the check to me. The next transaction that I recall was in 1911. McMurtry came on to

(Deposition of Charles W. Thorn.)

New York and told us that he had organized the Pacific Oil Lands Company in order to distribute the proceeds of the locations. He then gave me a certificate for 1,000 shares. This certificate No. 23 is the one he gave me and the receipt attached to the stub dated September 11, 1911, bears my signature. Don't think I signed that slip at the time because I made those slips myself. I signed the slip and handed it to him within a few days. At that time McMurtry told us that he had closed the contract with the Associated Oil Company that he was negotiating in 1910, and had received other moneys out of which he was going to pay the balance of the locators \$250. He also said he had transferred his contract with the Associated Oil Company to the Pacific Oil Lands Company.

Q. Did you know at that time whether or not all lands which had been located in the names of your locators had been embraced and affected by this contract with the Associated Oil Company? A. Section

28. Q. Did Mr. McMurtry tell you at the time he gave you the certificate No. 23, whether or not all of the lands that had been located by the use of the names of your locators, had been embraced in this contract with the Associated Oil Company? A. The section

28 in San Benito had not been embraced into it. In the contract. Q. Did he tell you whether or not

all the lands in the Midway Field, except section 28, had been embraced in this contract with the Associated Oil Company? A. There were 1,440 acres .

(Deposition of Charles W. Thorn.)

which had been sold to the Associated under this contract.

Don't remember that he said that all the lands located in the Midway field, with the exception of section 28, had been sold by the Associated under this contract. Don't remember that [595—489] I then learned of any other lands that had been located by McMurtry which were not embraced in this contract, other than the lands in section 28, and I made no inquiry as to the same. McMurtry then told me who the stockholders in the Pacific Company were, but I don't now remember. I understood that McMurtry was a stockholder and also Major Hoeppner. No, I did not then know whether McMurtry was a locator on any of these lands. Didn't know whether Hoeppner was. Don't remember that I made any inquiry as to whether Hoeppner was. The next paper I signed was a proxy in August, 1913, which is Plaintiff's Exhibit No. 79.

(Plaintiff's Exhibit No. 40 shown witness.)

Yes, I received a notice like that. The next paper I received was a letter in December, 1913, requesting my consent to the distribution of a dividend.

(Plaintiff's Exhibit No. 32 dated December 3, 1913, shown witness.)

Yes, I received a similar letter about that time. Yes, Plaintiff's Exhibit No. 80 is the consent which I executed.

(Plaintiff's Exhibit No. 78 offered in evidence and is as follows:)

(This is a ratification similar in form to Plain-

(Deposition of Charles W. Thorn.)

tiff's Exhibit 1 with the deposition of Frank B. Chapman.)

(Plaintiff's Exhibit No. 79 offered and read in evidence as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman.)

(Plaintiff's Exhibit No. 80 offered and read in evidence as follows:)

(This is a consent to dividend and is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.) [596—490]

After signing this consent to distribution of dividends I received a check in January, 1914; check No. 1189 dated San Francisco, January 8, 1914, on the Bank of California National Association San Francisco, for \$20, payable to C. W. Thorn, signed Pacific Oil Lands Company. Yes, the check bears my endorsement.

(Plaintiff's Exhibit No. 34 shown witness.)

Yes, I received a similar letter with this dividend check. Also received a statement of the company at that time, which I have and now produce. (This report is similar to Plaintiff's Exhibit No. 35.)

The next transaction which I recall was in March, 1914. Searls came to New York and stated that he wanted to buy up the stock of the Pacific Oil Lands Company to know if I was willing to sell mine. I sold him mine and received \$250 for it. I signed the assignment on this certificate No. 23 at that time. No, I haven't since then received any other stock in

(Deposition of Charles W. Thorn.)

this company or any other dividends, nor have I received anything else on account of the fact that my name appeared on account of these transactions. Yes, I was in San Francisco in November, 1916. Talked with various witnesses during that time.

**Cross-examination.**

No, I never attempted to revoke or modify this power of attorney to McMurtry. [597—491]

**Deposition of Harry E. Bashore, for Plaintiff.**

HARRY E. BASHORE, called by plaintiff April 10, 1917, testified by deposition as follows:

Reside at Harrisburg, Pa. Formerly worked in New York City, and was employed by Nixon & Thickers as office manager. Knew J. B. Thickers of this firm. He first sold me some stock, and a short time later asked me to sign a power of attorney (Plaintiff's Exhibit 4). I considered him a confidential friend. He came to me one day and asked me to sign my name to a paper which, he said, was a power of attorney giving McMurtry power to locate certain oil lands in California. He said I would not be required to put up any money, and by my signing this paper it would mean a lot to him as well as assist Mr. McMurtry. Under those conditions I did not hesitate to affix my signature, knowing that I would not be involved financially in any way, shape or form. Had no intention of acquiring land for myself, and was never informed of my name being used at any time in locating any land. After signing this power of attorney, the next I heard of the matter was some



(Deposition of Harry E. Bashore.)

time later Thickers asked me to sign another paper the name of which I have forgotten. This paper is the one referred to, and I signed and executed it (Plaintiff's Exhibit 1). (This exhibit is similar in form to Exhibit No. 1 with the deposition of Frank B. Chapman, and is dated and acknowledged August 22, 1910.) Don't recall what Thickers said then, only that all the boys who had signed the power of attorney were going to sign it. I read it before signing, but don't recall any specific conversation concerning these contracts of sale dated August 4, 1910, referred to therein. Relied a good deal on Thickers, he being a personal friend. I never felt that he would ask me to do anything but what was right. I simply signed it as I did the power of attorney. I was not then informed that my name with certain others had been employed in making the placer mining locations mentioned. At the time I signed the ratification [598—492] I claimed no interest in any land affected by this contract of August 4, 1910, between McMurtry and W. F. Herron and others. Don't recall receiving any money then, but as near as I can recall I later received and cashed a check, being check offered and read in evidence as follows:  
"5th Ave. and 28th St.

No. 162.

New York Sept. 11, 1911.

SECOND NATIONAL BANK, A-63  
of the City of New York.

Pay to the order of H. E. Bashore Two Hundred and Fifty Dollars. \$250.00. F. H. SEARLS."

(Endorsement:) "Received from L. B. McMurtry

(Deposition of Harry E. Bashore.)

\$250.00 in full payment of all my right, title and interest in and to all lands located by said L. B. McMurry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurry bearing date the 19th day of December, 1907.

For deposit in Dauphin Deposit Trust Co.

H. E. BASHORE.

Received payment through the New York Clearing House 9-18-19. . . . Nat'l Bank of New York. Pay to the order of any bank, banker or Trust company. Prior endorsements Guaranteed. Sep. 18, 1911, Dauphin Deposit Trust Company, Harrisburg, Pa. Donald McCormick, Treasurer. C-3798."

That is the check I received from Thickens accompanied by letter reading:

"My dear Bashore:

At last things are happening. The use of your name is bearing some fruit and I am able to make good my promise, and a little more. Am enclosing check for \$250.00. Put this through your bank as soon as you can, as we want to get all the checks back as soon as possible, as we have to show them as receipts. In addition we are giving a bonus of 1000 shares stock, par value, \$1.00 per share in the Pacific Oil Lands Co. This stock will be worth \$2.00 per share very soon. So you can see I am making good. Just sign the two receipts and return them to me. Deposit your check and get that through as quickly as you can. Am glad you are on to this.

Haven't heard from you in some time but am send-

(Deposition of Harry E. Bashore.)

ing this to Duncannon and hope it will be forwarded to you at once. Let me hear from you as soon as you receive this.

Hastily,  
J. B. THICKENS.

Sept. 12/11."

The next I heard with reference to these transactions was the receipt of a letter from Thickens as follows: [599—493]

"J. B. THICKENS,  
79-81 Fifth Avenue,  
New York.

March 16, 1914.

Mr. H. E. Bashore,  
c/o Harrisburg Automobile Co.,  
3rd & Hamilton Sts.,  
Harrisburg, Pa.

My dear Bashore:

Once more I have good news for you. Send me your stock of the Pacific Oil Lands Co., signed by you in space designated on the back of the certificate. As soon as I receive this stock will send you check for \$250.00 which I have been authorized by the company to give to the locators for the return of this stock. The government is "making it hot" for us at the present time, and in order to carry our point with them and try to hold at least a part of our land, it is necessary to have all the stock in California. For this reason I am asking you to send me the stock properly signed by return Special Delivery. Upon

(Deposition of Harry E. Bashore.)

receipt of same will forward check to you.

Sincerely yours,

JOHN B. THICKENS.

JBT/HP.”

I received a certificate for 1000 shares of stock in the Pacific Oil Lands Company when I received this check for \$250. Held this Certificate No. 11 about three years, then I surrendered to Thickens in connection with the check for \$250 signed by Searls. After receiving this check the next thing I recall was the receipt of a letter from Mr. Walker. My correspondence with Walker on this subject is as follows:

NIXON, WALKER & TRACY,

Everett Building,

45 East 17th Street,

New York.

Sept. 29th, 1916.

Mr. H. E. Bashore,

Harrisburg, Pa.

My dear Heb:

I do not know whether this letter will reach you or not, but am taking a chance.

It appears as though McMurtry and Thickens need us again regarding the property we located for them in California. There is a lawyer on from California now who has been in to see us all. As near as we can find out this property has been purchased by the Standard Oil Company and the Government is bringing suit against either the Standard Oil Company or

McMurtry to get the property back as Government lands again.

The property was sold for a very large sum and where we did get a few dollars out of it we are of the opinion that if we do hold out we could get quite a sum.

None of us here are going to do anything to further the interest of McMurtry in this transaction and are going to [600—494] hold out to see the outcome of same. We believe that if we do we might get a nice bunch of money out of the property or if we do not get it, the Government will get the land back, and as the Standard Oil are interest in it, it appears as though we might be able to do something.

They need all of the locators as we understand it, and we do not know whether you have heard anything recently regarding this matter or not, but if you get this letter kindly write me and we will post you as to what we know.

Yours very truly,

H. M. WALKER.

HMW/H.



(In pencil:) Copy sent to Duncannon."

(Letter-head.)

"Geo. G. McFarland, President and General  
Manager.

(REO)              B. F. Blough, Treasurer. (REO)

HARRISBURG AUTOMOBILE COMPANY,

(Incorporated)

REO PLEASURE CARS AND TRUCKS.

General Sales Agents

Largest Garage

and Jobbers

In Central Pennsylvania,

Open all Night.

Office and Salesroom.

THIRD AND HAMILTON STREETS.

Harrisburg, Pa., Oct. 1, 1916.

H. M. Walker,

New York.

Dear Bert:

Your letter reached me yesterday at the same old stand where I have been plugging, to my dear friends in New York, as a sort of a 'Rip Van Winkle.'

Was very glad that you put me wise to the line of dope with reference to the McMurtry-Thickens deal. At that time I signed that last paper sent me I was suspicious and if you remember I wrote Fred on the subject but when you get something for nothing there was not much use putting up a fight so I fell in line with the rest of you boys.

About two weeks ago there was a government detective from California interviewed me as to the why's and wherefore's and I learned at that time that the land had been disposed of for quite a nice sum. Also

that the Government would try to get it back but he said the evidence for the government was very slim because McMurtry had lived up to the requirements. He wanted me to give a signed statement which I refused to do. I still possess all the correspondence received from Thickers on the subject and it may prove of some assistance in the matter because I was one of the few that were written to. Also have a financial statement sent me by the Oil Co. which condition at that time was very flattering. I am willing to give any assistance I can to help you fellows along in the matter but look out that that wise lawyer from California don't clean us all. He is out for what he can get out of it. You know we "rubes" out here are sort of skeptical. Keep me posted. [601—495]

It seems like old times to get a few lines from you and many, many times I have wondered how you all were getting along but too busy in my own line to take a few minutes to write. I have been devoting every ounce of energy to make this business a success and will give you a little idea of what has been done so you can judge yourself whether I am a has been or not. In 1913 we sold 200 cars, 1914, 300; 1915, 450; 1916, 700 and our contract for the next twelve months is 75 cars per month or practically 1000 cars. We have 50 dealers in this state buying cars through this office and carry \$15,000 worth of parts on hand. We handle nothing but the 'REO Pleasure Cars and Trucks.' Many changes have been necessary to handle this rapid increase in business which of course

you cannot realize on paper, you would have to see our plant to figure that out, so H. E. B. has had his hands full but it is a great pleasure to watch success succeed. This winter I hope to make a short trip over your way and it would afford me much pleasure to mingle with you all again for a while. Give my kindest regards to Fred and the other boys and my best wishes for your own success. Keep me advised.

Yours sincerely,

BASHORE.”

(Letter-head NIXON, WALKER & TRACY, as before.)

New York, October 2, 1916.

Mr. H. E. Bashore,

c/o Harrisburg Automobile Co.,

Harrisburg, Pa.

My dear Heb:

Your letter of October 1st received, and I was indeed very glad to receive same.

I note that a Government agent has been to interview you and no doubt, if you have not heard from Mr. Thickens, you will shortly. We have been in touch with the eight locators and they have all agreed not to do anything more to further interests of Mr. McMurtry at the present time. As far as we can find out, he has made, or is in a position to make a large sum of money out of this property. We all feel that we were humbugged a bit at the start in obtaining our signatures and that we fell very much too easily when we had the first \$250.00 offered us.

I will keep you posted if any developments arise.

I am very glad indeed that you have been doing so well in the Automobile business and the increase that you have shown in the business should certainly be very gratifying to you.

Fred is away today, but I will show him your letter upon his return and I know he will be very interested in reading same.

Mr. H. E. Bashore,                      2.                      October 2, 1916.

I also note that you intend to visit New York some time this Fall or Winter and I trust that you will favor us with a call when here.

All of the boys join with me in sending their best regards to you. Best wishes for your continued success, I am,

Yours very truly,  
BERT."

[602—496]

(Letter-head as before.)

"Harrisburg, Pa., Oct. 29, 1916.

Dear Bert:

I just received the following telegram from San Francisco, 'Will you come to San Francisco, Cal., and appear as witness for United States on November Twenty-second if fees and mileage are paid by Government at rate of three dollars per day while absent from your city and five cents per mile each way? Will advance railroad fare if desired. Answer collect government rate. Signed Hall, Special Assistant to Attorney General.

Think this thing over and wire me at my expense if my appearing there is going to interfere in any

way with the future prospects of the boys getting what belongs to them as outlined in your recent letter. I haven't had my vacation as yet and this trip would be a treat to me, but I do not want to do anything that is going to prove our chances a failure. I am writing this in haste—wire me your opinion and I will guide myself accordingly. With the same good wishes, I remain,

Yours sincerely,

H. E. BASHORE."

(Telegraph Blank.)

“POSTAL TELEGRAPH—COMMERCIAL  
CABLES.

TELEGRAM.

Delivery No. 191.

Received at

71½ No. Third Street,

Harrisburg, Pa.

Telephones: Bell 1772, 1773

C. V. 261.

The Postal Telegraph-Cable Company (Incorporated) Transmits and Delivers This Message  
Subject to the Terms and Conditions Printed  
on the Back of This Blank.

80NY VR. 435 PM. 7.

By New York N Y Oct 30 1916.

P. E. Bashore,

Care Harrisburg Auto Co.

3rd & Hamilton Harrisburg, Pa.

Do not do anything until you receive letter.

H. M. WALKER.



MAIL

Telephoned 11:50 M.

By B to A. Man." [603—497]

(Letter-head as before, NIXON, WALKER &  
TRACY.)

"New York, October 30th, 1916.

Mr. H. E. Bashore,  
Harrisburg, Pa.

Dear Heb:

I deceived your letter of the 29th, and I wired you today not to do anything regarding the telegram that you received from the Assistant Attorney General of the United States Government until you received letter.

Beg to advise that as far as we can find out the McMurtry interests are still in New York. They have met with no success in obtaining any of the locators that were in our office at the time to do anything to further their interest. We are altogether on the subject and it appears that if we refuse to do anything for the McMurtry interests that we can get them to 'come across' with a nice sum, provided we would appear for them. Of course, if any of us appeared as a witness for the United States Government, and any such witnesses were not satisfied with the deal that they got from McMurtry, it would mean that the land that we located, and which has since been sold to the Standard Oil Company, would revert again to the Government. This is what the McMurtry interests want to prevent.

Mr. Mahr, who as you know, is a good fighter, expects to see the Thickers and McMurtry lawyer either this afternoon or tomorrow and is going to put up to them in very strong terms that unless the McMurtry interests want to 'come across' with a sum that is acceptable to all of us that some one of us will appear as a Government witness against them. We think in this manner we may be able to force their hand.

In talking this matter over today with a number of the boys, we would dislike very much to stand in the way of your getting a free trip to California, but we believe if you would hold off a few days we can get something concrete that it might pay you a good deal better to go to California as a witness for yourself rather than for the Government.

We will keep you posted on everything that is done, and you will hear from us in time to give the Government an answer, so that if you should decide that you wanted to go as a Government witness you could arrange it so you could be there by November 23rd.

With kindest regards, I am,

Yours very sincerely,

BERT.

HMW/H.

P. S.—Since writing you, Mr. Mahr has had Mr. Thickers on the telephone and has told him very plainly that ten of the locators, whom he and I represent will do nothing to further the interests of Mr. McMurtry unless Mr. McMurtry 'comes

across' with what we consider our just share of the proceeds of the sale of the property. One-half of the property that we located was sold for \$1,370,000.00, and by rights, we as locators were entitled to 1/32 of this.

As Mr. Mahr told Mr. Thickers we did not expect to get 1/32, but we were entitled to a good deal better share of same than the few hundred dollars that were given us, and that we would not do anything further to further the interests of Mr. McMurtry unless they wanted to meet us the way that we thought they should. He has asked us not to do anything to further the interests of the Government and stated that he would telegraph to San Francisco at once regarding our position and that we should hear from him in two or three days' time. Just as soon as we hear anything further from Mr. Thickers I will advise you." [604—498]

(Letter-head as before.)

"Harrisburg, Pa., Oct. 31, 1916.

Dear Bert:

Received your wire yesterday and your letter this morning which was digested thoroughly and will obey your command 'rest arms.' until further advised. If Billy Mahr, the wonderful orator, cannot pull off that little stunt with Thickers, special wise guy for McMurtry, the king pin of the oil fields, then your 'Hayseed' friend will have to go all the way to San Francisco and talk dutch to them. Cannot understand why they selected me anyway, I am not half as good looking as you fellows, don't possess the up-

to-date business methods as you New Yorkers, and worst of all, three weeks away from this ere village, why I would be an entire stranger when I got hime. The more I think of the whole thing I never dreamed that McMurtry or Thickers could pull such a thing over on you poor 'boobs' who call yourselves 'New Yorkers.' Laying all jokes aside—just keep me posted and if there is nothing doing why then I am going to take that joy ride all right but will do nothing until you advise me further which must be by Saturday of this week. Will have to wire then to get check here in time for car fare. That will be all today so will close with best regards to the boys and yourself.

Yours sincerely,

H. E. BASHORE."

(Letter-head as before, NIXON, WALKER & TRACY.)

"New York, November 2, 1916.

Mr. H. E. Bashore,

c/o The Harrisburg Automobile Co.,  
Harrisburg, Pa.

My dear Heb:

Your letter received, and we expect to wire you tomorrow what to do about advising the government that you will appear for them as a witness.

Some of the boys in the office today received from Mr. Helms who is in San Francisco and represents Mr. McMurtry, the following telegram:

'Your attendance required November 20th. Transportation and advance expenses arranged

through New York Central. Call at office No. 1216 Broadway and arrange routing here direct, returning at your pleasure. Compensation for loss of time guaranteed by principals here and will be arranged on arrival. Wire answer c/o Palace Hotel.'

We have an appointment to see Mr. Thickens tomorrow and we expect to have some definite information from him as to what the McMurtry interests intend to do. We will then advise you by wire whether it will be best for you to appear as a witness for the McMurtry interests or the government.

With kindest regards, I am,

BERT." [605—499]

(Letter-head as before.)

"Harrisburg, Pa., Nov. 2, 1916.

Dear Bert:

Just received another wire from San Francisco asking me to give them my decision tomorrow, Friday, so if I do not hear from you by tomorrow evening will send a night wire that I will be there on Nov. 20th. McMurtry has had ample time to know what he is going to do and you fellows have already extended him more courtesies than he is entitled to. Personally, I do not think he will do anything, simply keep you guessing until it is too later, as he thinks for you to get out there. Will not take up any more of your time today. If they come across and you figure the amount enough for me to remain at home wire me accordingly. With best wishes, remain,

Yours sincerely,

H. E. BASHORE."



(Letter-head as before, NIXON, WALKER &  
TRACY.)

“New York, November 3, 1916.

Mr. H. E. Bashore,  
c/o The Harrisburg Automobile Co.,  
Harrisburg, Pa.

My dear Heb:

I received your letter of November 2nd and I telegraphed you this morning as follows:

‘Have made arrangements for you to go with rest of boys as McMurtry witness. Traveling expenses all paid and generous offer of our just dividends if our case is won. Wire government you cannot go. Say nothing else. Arrange to come to New York in a few days. See letter.’

Beg to advise that this morning Mr. Mahr, Mr. Metz and myself met Mr. Thickens at the McAlpen Hotel. We told him that unless the McMurtry interests decided to come across with the fair portion to the thirty-two locators that eight *witness* that they want to go to California would not go, unless they went as government witnesses.

Mr. Thickens showed us two telegrams that he had received from McMurtry in San Francisco in which he stated that we were needed very badly for their side and that they would pay all traveling expenses to San Francisco, with a liberal allowance for incidentals. They would also pay any amount that any of the boys lost for loss of time away from business.

We told Mr. Thickens that this was all very well,

but that we must have some definite idea as to what we, as locators, would get out of same, provided the suit was won by the McMurtry interests.

Mr. Thickens wanted to know what we thought we were entitled to, and we told him that it had been agreed upon to sell the property for somewheres around two million dollars, and the thirty-two locators of this certain section were entitled to at least five hundred thousand dollars. The McMurtry interests could then have the balance. He laughed at this proposition, and we told him it was nothing to joke about, that we felt that the thirty-two locators were entitled to this amount. [606—500]

He stated that that would be over fifteen thousand dollars a piece, and we told him that was about the amount we felt we were entitled to.

He has wired Mr. McMurtry what we have said and expects an answer by wire from him either late this afternoon or tomorrow morning.

Where, of course, we may not get this amount, we are of one mind that we are going to get something pretty good out of it, as our just share, provided the suit is won by the McMurtry interests. We have also had a lawyer's advice on this subject and he tells us that it can be so arranged before any of the boys go that the amount that is agreed upon that we are to get will be in New York before they go, so that if the suit is won there will be no question, but what the amount will be paid.

I trust that you have decided to go as a McMurtry witness, for the reason that if the suit is

won, we will all benefit alike. If the suit is lost you will have all of your expenses paid to San Francisco, and return, with a liberal allowance for the loss of time, any way.

Of course, if the government should win the case, no one would get anything and if the McMurtry interests win, I believe that we are sure to come in for some amount, but as stated, I cannot say definitely what it will be now. The money is in New York now to pay all traveling expenses for the boys who have said they will go. Those who have said that they will go are, Eugene Metz, Walter Wilson, William Keenan, Joe Farrell, Will Mahr, and we took the liberty of saying that we believed you would go as a McMurtry witness.

We trust that we did not overstep ourselves in saying this for you. We believe it would be advisable if you could arrange to come to New York the first of the week. Of course, we will be closed on Tuesday, so if you cannot come Monday make it Wednesday.

Mr. Thickens will pay your expenses from Harrisburg to New York, just the same as he will your expenses to San Francisco.

I believe that we have acted for the best interests of all concerned in this matter, and trust that you will agree with me.

Hoping to see you soon, I am,

BERT."

(Letter-head as before.)

“Harrisburg, Pa., Nov. 4, 1916.

Dear Bert:

The enclosed letter is rather short but I expect that you will show it to Thickers and that is why I did not say any more. The McMurtry interests cannot afford to have me go there as a witness for the U. S. Government but that is up to them. My decision is based on good grounds and regret cannot put same on paper at this time. Expect to leave here about the 14th but have not decided as yet whether I will go via Chicago or Washington. Let me know the plans of the boys, may be able to arrange to go with them. Let me know the final answer about the \$15,000 proposition. Will not wire my final answer to San Francisco until Wednesday of next week and that will give Thickers a chance if he wants it. Keep me posted.

Yours sincerely,

BASHORE.” [607—501]

(Letter-head as before.)

“Harrisburg, Pa., Nov. 4, 1916.

H. M. Walker,  
New York.

Dear Bert:

Received your wire and both letters which have been noted very carefully. I have given this proposition serious consideration for the past week, been in consultation with my lawyer several times with the result that his advice and my conscience tell me to go to San Francisco as a witness for the

United States Government. At this time it would be impossible for me to come to New York next week on account of planning for the big trip but if Mr. Thickens wants to see me he knows where I am. That is all I will say at this time.

Yours very truly,  
H. E. BAYSHORE."

(Letter-head as before, NIXON, WALKER & TRACY.)

"New York, Nov. 6th, 1916.

Mr. H. E. Bashore,  
c/o Harrisburg Automobile Co.,  
Harrisburg, Pa.

My dear Heb:

I received your letter of November 4th, and was indeed surprised that you had decided that you think it best to go as a government witness. If you go as a government witness you can only tell the truth, which is all that is wanted of you if you go as a witness for Mr. McMurtry. All that the government will want to know is were you satisfied. It appears that Mr. Thickens has a letter in his possession from you written when you were with Henry Sonneborn & Company in which you stated that you were very much pleased with the amount that you received, that you were surprised you received so much, which would certainly go to show that you were satisfied with the transaction and this is all that you would be expected to testify to except that you were an original locator.

It appears to us that your only chance, as well as



the rest of us, of getting a fair dividend, that we here believe we were entitled to, is for you to go as a McMurtry witness with the rest of the boys from here. If this is done it really appears to us as though a good portion of our just receipts will come back.

We know that you wish to make the trip to California, but we believe that it is wiser for you and more to your own personal interest to go as a friendly witness to the McMurtry interest than otherwise.

We are expecting a long letter from San Francisco Wednesday or Thursday that should have a great deal of information in it, and, as stated, believe that it would be best for you to go with our boys. Of course, you can do as you think best.

Kindly advise whether we can count on you being with us or not, for as we wrote you personally all of the money for expenses is in New York now.

Yours very truly,  
BERT."

HMW/H. [608—502]

(Letter-head as before.)

"Harrisburg, Pa., Nov. 8, 1916.

Dear Bert:

Have been laid up with a bad cold since Saturday and that is why you have not heard from me more promptly. Unless I feel a whole lot better than I do now I would not take that trip out there under any circumstances. Did not expect that my last letter would cause any disappointment among you

all but now see how you read it. I know that you are so conscientious in all that you say and have done and firmly believe that every move has been well thought over and as far as you know for the best interest of all concerned. While we may have been satisfied we now know and feel that the McMurtry interests have made 'goats' out of us all—with that in mind I cannot warm up to any line of argument that they are going to hand out—I might be wrong, but that is how I feel about it. On the other hand they have never directly requested me to act as their witness; if they really wanted me they could have easily dealt with me direct which would have been much better than through you. If I should go as their witness I would feel like a 'puppy dog.' Those are my frank sentiments. I don't want you to think that I have any desire to be arbitrary nor do I want to do anything that is going to mar your personal interests in this matter and I have been just as conscientious about everything as you have. The Government have asked me to be their witness, they have told me what they would do in the way of remuneration, that much I know. If I should decide to act as their witness I am simply going to tell the truth and nothing else—I have no desire to fight this proposition or start anything—and my lawyer claims that my being a witness for the government under those circumstances would not in any way injure our future possibilities of McMurtry wins the suit. I remembered very well what I had written to Thickers, in

fact I have all the correspondence but it was no intention of mine to use this unless forced to do so.

By the time you get this letter you will have that long letter from San Francisco and I would appreciate your advising me the contents. It may help me to decide this knotty problem. In the meantime I will patiently wait. With kindest regards, I remain,

Yours very truly,

H. E. B."

(Letter-head as before, NIXON, WALKER & TRACY.)

"New York, November 13, 1916.

Mr. H. E. Bashore,  
Harrisburg, Pa.

Dear Heb:

Your favor of the 8th received and I am indeed very sorry that you have been laid up with a bad cold.

Nothing new developed, as yet, except that the trial has been postponed for one week from November 20th.

Mr. Thickers has not as yet received the letter that he stated has been forwarded, so we have nothing new to report. Just as soon as we hear anything of interest, we will advise you without delay.

Trusting that by this time you have gotten the better of your cold, I am with kindest regards,

Yours very truly,

BERT." [609—503]

(Deposition of Harry E. Bashore.)

I never was informed that my name with seven others had been used in making 39 placer mining locations in San Benito County, California, by L. B. McMurtry, acting under that power of attorney (Plaintiff's Exhibit 4), and never claimed any interest in any lands so located. The checks for \$250 each and a dividend check of the Pacific Oil Lands Company for \$20 is the only profit I ever received. This check dated January 8, 1914, is the one referred to as the dividend check. I also received from the Pacific Oil Lands Company a report to stockholders which I produce.

(This report, Exhibit 2, with this deposition, is similar to Plaintiff's Exhibit 35 with the deposition of Harry B. Thorn.) [610—504]

#### Cross-examination.

I bought stock from John B. Thickens in the Empire Oil & Development Company for which I paid \$95.00. After I was on the witness-stand in California I asked Searls to refund that money, but he did not do so; McMurtry was with him when I asked him. This certificate for 200 shares of stock of the Empire Company is dated May 24, 1907. I received it from Thickens May 25, 1907. It was signed L. B. McMurtry, President, and C. Wesley Thorn, Secretary. At the time I signed this power of attorney (Plaintiff's Exhibit 4), Thickens came to my office in the Knickerbocker Building, and said that McMurtry wanted to go to California and locate oil lands and had to have a power of attorney, and that this power of attorney he would have to have signed,

(Deposition of Harry E. Bashore.)

and showed me the line where to sign it, and that I would not be involved in any way, shape or form. I asked him whether it was right for me to sign it, and whether I had a perfect right to sign it, as I did not want to do anything except what was right. I read it and knew it was a power of attorney. After signing it, I don't recall talking to any one about having signed it, though probably did. May have joked with some of my coemployees before I left New York about the possibilities of land being located—nothing about making money out of it. I never figured about making any money. None of the employees of Nixon & Thickers conferred with me about it. Nixon moved into another building and went on with the business and I was a competitor and didn't meet these employees often. Didn't know McMurtry when I signed that power. From the time I associated myself with Nixon & Thickers I heard a good deal about him. Nixon and Thickers kept in very close touch with Mr. McMurtry, and I don't just remember how long it was *ehtn* it seemed that the Empire Oil proposition was going to be a failure and Mr. Thickers kept in touch with Mr. [611—505] McMurtry. When Thickers sold me that stock in the Empire Company I didn't hear what his interest was concerning it. When he asked me to sign that power of attorney he didn't tell me how he or anybody was going to be benefited that I recall. I never expected to get a cent out of it. Thickers said it would help McMurtry. Never brought himself in it. He said McMurtry was



(Deposition of Harry E. Bashore.)

practically down and out, and in order to assist Thickens to aid McMurtry I signed the power of attorney. I never felt that Thickens was going to be benefited. Yes, Thickens said that if McMurtry made good he would take care of us, but I paid no attention to the remark. Never expected to get anything out of it. I read every paper I signed, and before I signed on the back of that check on which I signed away all my right and interest I telephoned Mr. Nixon and asked his advice, and he said, "When you get something for nothing, what's the use to stand out." That was after I received the report of the Pacific Oil Lands Company and after I signed the ratification. Had no intention when I signed that power of attorney to aid Thickens or McMurtry to cheat or defraud the Government.

#### Redirect Examination.

When I was in San Francisco the second time I had a conversation with Searls and McMurtry. Searls told me that all the other parties had received all their money back for their stock in the Empire Company, that some money had been set aside to pay for all of the outstanding stock and didn't understand why I had not been so informed, and requested me to send back my stock for payment. [612—506]

**Deposition of Wellington F. Christman, for Plaintiff.**

WELLINGTON F. CHRISTMAN, called April 4, 1917, by plaintiff, testified by deposition as follows:

Am a resident of Clinton, Wisconsin. Visited in New York in 1902. Have not been there since. I did not sign that power of attorney (Plaintiff's Exhibit No. 6) and was not in New York in December, 1907, nor did I appear before Commissioner of Deeds, George F. Handel, of the city of New York on the 19th day of December, 1907, or at any other time. I signed a paper that John Thickens brought to me, which was something about some land in Kern County, California. The first I heard of this matter was in a letter I received from John C. Thickens, in which he sent me a paper which he wanted me to sign. That was some four or five years ago. I have not the letter and don't know where it is. This letter stated that if I would sign these and send them back I would receive about \$250. That paper (Plaintiff's Exhibit No. 1, with the deposition. Ratification dated Sept. 10, 1910, similar to plaintiff's Exhibit 1 with the deposition of Frank B. Chapman) is the one I signed and acknowledged before F. W. Herron, Notary Public. That was the paper that Thickens brought to me to sign. A week or ten days before signing that paper I signed a similar one which I received from Thickens, but did not acknowledge same before a notary public. After depositing the first paper which I signed in the postoffice, I reclaimed it and

(Deposition of Wellington F. Christman.)

tore it up. I signed my name William F. Christman on this paper (Plaintiff's Exhibit No. 1), for the reason that Jack Thickens came to my house with the paper in his hand and said he wanted that signed and that if I would sign it I would get \$250.00 and maybe more, and after consulting with a lawyer in Clinton, and the President of the Citizens National Bank of Clinton, and being advised by them that there was nothing in that paper that would interfere with me or do any [613—507] harm, I finally signed it. I told Thickens that he knew my name was Wellington, but he says, "If you change that it will make a difference with us. We want this paper to go through straight. If you should sign that Wellington F.," he says, "sign it William F.," and I didn't think it would make any difference. I am called William right there in our own town lots of times, and I am called Bill, and I tell them that I won't answer to Bill; but I will to Will or William or Wellington. My name is Wellington. John Thickens is my wife's brother's son.

Q. When was the next time, if you ever did, sign any other paper, if any papers were presented to you to be signed? A. Now, I am not sure whether he left me, I won't tell that, after he paid me the money, he paid to me some money, and I signed a receipt for it, that I signed in the Citizens Bank, before no notary public, understand. He said that he wanted that to show that he had paid me this money.